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EXHIBIT 1

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Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2000-2001

October 17, 2003

Mark Stevenson, President
Send Technologies LLC
2904 Evangeline Street
Monroe, Louisiana 71201

Re: Union Parish School Board

Re: Billed Entity Number: 139313
471 Application Number: 163210
Funding Request Number(s): 405241
Your Correspondence Dated: April 1, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 2000 Funding Commitment Adjustment for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 405241
Decision on Appeal: Denied in full
Explanation:

- You have stated on appeal that the appeal will provide clarifying information that corrects the erroneous assumptions made by the Schools and Libraries Division when it adjusted and rescinded funding that was granted to Send Technologies and Union Parish for Funding Year 2000. You state that there was no error during the initial review process regarding the Form 470 cited, but there was an error in a subsequent review due to insufficient information held by the SLD about Tom Snell and the competitive bidding process undertaken by Union Parish School Board. You state that listing Mr. Snell as the contact person on the Form 470 did in no way violate the intent of the bidding process and that the Union Parish Form 470 did not contain any service provider contact information. You state that

unlike all of the MasterMind type cases, Mr. Snell is an employee of the applicant (Union Parish School Board) and not an employee or representative of a service provider. You believe that the intent of the bidding process was fully observed and fulfilled in the case of Union Parish. You also state that Mr. Snell holds a fifteen percent minority ownership interest in Send Technologies and that he is not now, nor has he ever been an employee of Send, Mr. Snell is a passive investor in Send, and his ownership interest is substantially below that which could raise a question about a conflict of interest under any applicable law. You state that out of an abundance of caution, Mr. Snell disclosed his passive minority investment interest in Send to the appropriate local government officials after initial bids were received and Mr. Snell had realized that Send was bidding for Union Parish's services. You also state that the SLD's review of the previously approved and committed applications was prompted when the SLD learned of the Louisiana Audit that took place years after the competitive bidding process for Union Parish services. This matter was favorably resolved at the state level and the Louisiana Board of Ethics confirmed that there was no violation of the state and local procurement processes to ensure competition and this finding is significant. You close the appeal by stating that the critical public interest policies sewed by the Commission's competitive bidding rules are to ensure that schools and libraries seeking support through the E-rate program obtain the most cost-effective services available; through Union Parish's competitive bidding process, there was a fair and open competition for bidding of services; and at the end of the bidding process, Send was found to be the most cost-effective choice. You state that thus, the process Union Parish went through to choose Send explicitly met the public policy objectives that underlay the competitive bidding rules. Based on the facts stated, Send Technologies and Union Parish are therefore requesting that the SLD withdraw the issued Commitment Adjustment Letter and overturn the decision to rescind funding for this application.

- After a thorough review of the appeal, and upon review of the documentation (audit report from the State of Louisiana Legislative Auditor) which was obtained by the SLD, it was determined that Mr. Tom Snell, who is the authorized contact person listed on the cited Form 470 (Application Number: 482150000255298), also has a 15% ownership interest in the selected service provider (Send Technologies, LLC) as listed on the Form 471 application. According to the rules of the Schools and Libraries Program Support Mechanism (please see below), this is considered to be a conflict of interest (also see below) and is in violation of the competitive bidding guidelines, as the authorized contact person listed on the Form 470 cannot be associated in any way with a service provider as this violates the intent of the bidding process regarding fair and open competition. Based on this determination, the SLD Commitment Adjustment Letter that was issued on January 31, 2003, to the applicant and the related service provider informing them of the commitment adjustment that was made to this request (the rescinding of \$80,900.40 in full) was properly justified and was done according to the rules of the Schools and Libraries Support Mechanism.

- Rules of the Schools and Libraries Support Mechanism require the applicant to provide a fair and open competitive bidding process. Per the SLD website, "In order to be sure that a fair and open competition is achieved, any marketing discussions *you* hold with service providers must be neutral, so as not to taint the competitive bidding process. That is, you should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow *them* to unfairly compete in any way. A conflict of interest exists, for example, when an applicant's contact person, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected." Since the applicant's consultant/contact person in this case has been determined to have a 15% ownership interest in the selected service provider from whom the applicant is requesting services, all funding requests that are associated with the cited Form 470 must be denied. Consequently, the appeal is denied.
- Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment, and preventing unfair competitive advantage.¹ A competitive bidding violation and conflict of interest exist when an applicant's contact person, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected.
- FCC rules require applicants to seek competitive bids and in selecting a service provider to carefully consider all bids.² FCC rules further require applicants to comply with all applicable state and local competitive bidding requirements.³ In the May 23, 2000, *MasterMind Internet Services, Inc. (MasterMind)* appeals decision, the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.⁴ The FCC reasoned that under those circumstances, the Forms 470 were defective and violated the Commission's competitive bidding requirements, and that in the absence of valid Forms 470, the funding requests were properly denied.⁵ Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone and fax numbers, and email address.

¹See, e.g., 48 C.F.R. § 9.505(a), (b).

²See 47 C.F.R. §§ 54.504(a), 54.511(a).

³See 47 C.F.R. § 54.504(a), (b)(2)(vi).

⁴See *In re MasterMind Internet Services, Inc.*, CC Docket 9645, ¶ 9 (May 23, 2000).

⁵See *id.*

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your *appeal to the FCC*. Your appeal must be **POSTMARKED** within **60 days** of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options.

We *thank* you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Tom Snell
Union Parish School Board
Marian Highway
Farmerville, LA 71241



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2000-2001

October 17, 2003

Mark Stevenson, President
Send Technologies LLC
2904 Evangeline Street
Monroe, Louisiana 71201

Re: Union Parish School Board

Re: Billed Entity Number: 139313
 471 Application Number: 160965
 Funding Request Number(s): 385823
 Your Correspondence Dated: April 1, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to *your* appeal of SLD's Year 2000 Funding Commitment Adjustment for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If *your* letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 385823
Decision on Appeal: Denied in full
Explanation:

- You have stated on appeal that the appeal will provide clarifying information that corrects the erroneous assumptions made by the Schools and Libraries Division when it adjusted and rescinded funding *that was granted* to Send Technologies and Union Parish for Funding Year 2000. You state that there was no error during the initial review process regarding the Form 470 cited, but there was an error in a subsequent review due to insufficient information held by the SLD about Tom Snell and the competitive bidding process undertaken by Union Parish School Board. You state that by listing Mr. Snell, as the contact person on the Form 470 did in no way violate the intent of the bidding process and that the Union Parish

Form 470 did not contain any service provider contact information. Unlike all of the Master Mind type cases, Mr. Snell is an employee of the applicant (Union Parish School Board) and not an employee or representative of a service provider. You believe that the intent of the bidding process was fully observed and fulfilled in the case of Union Parish. You also state that Mr. Snell holds a fifteen percent minority ownership interest in Send Technologies and that he is not now, nor has ever been an employee of Send, Mr. Snell is a passive investor in Send, and his ownership interest is substantially below that which could raise a question about a conflict of interest under any applicable law. You state that out of an abundance of caution, Mr. Snell disclosed his passive minority investment interest in Send to the appropriate local government officials after initial bids were received and Mr. Snell had realized that Send was bidding for Union Parish's services. You also state that the SLD's review of the previously approved and committed applications was prompted when the SLD learned of the Louisiana Audit that took place years after the competitive bidding process for Union Parish services. This matter was favorably resolved at the state level and the Louisiana Board of Ethics confirmed that that there was no violation of the state and local procurement processes to ensure competition and this finding is significant. You close the appeal by stating that the critical public interest policies served by the Commission's competitive bidding rules are to ensure that schools and libraries seeking support through the E-rate program obtain the most cost-effective services available through Union Parish's competitive bidding process, there was a fair and open competition for bidding of services, and at the end of the bidding process, Send was found to be the most cost-effective choice. Thus, the process Union Parish went through to choose Send explicitly met the public policy objectives that underlay the competitive bidding rules. Based on the facts stated Send Technologies and Union Parish are therefore requesting that the SLD withdraw the issued Commitment Adjustment Letter's and overturn their decision to rescind funding for this application.

- After a thorough review of the appeal, upon review of the documentation (audit report from the State of Louisiana Legislative Auditor) which was obtained by the SLD. It was determined that Mr. Tom Snell who is the authorized contact person listed on the cited Form 470 (Application Number: 482150000255298), also has a 15% ownership interest in the selected service provider (Send Technologies, LLC) as listed on the Form 471 application. According to the rules of the Support Mechanism (please see below) this is considered to be a conflict of interest (also see below) and is in violation of the competitive bidding guidelines, as the authorized contact person listed on the Form 470 cannot be associated in any way with a service provider as this violates the intent of the bidding process regarding fair and open competition. Based on this determination, the SLD Commitment Adjustment Letter that was issued on January 31, 2003 to the applicant and the related service provider informing them of the commitment adjustment that was performed on this request (the rescinding of \$63,000.00 in full) was properly justified and was done according to the rules of the Support Mechanism.

- Rules of the Support Mechanism require the applicant to provide a fair and open competitive bidding process. For the SLD website; "In order to be sure that a fair and open competition is achieved, any marketing discussions you hold with service providers must be neutral, so as not to taint the competitive bidding process. That is, you should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow them to unfairly compete in any way. A conflict of interest exists, for example, when an applicant's contact person, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected." Since the applicant's consultant/contact person in this case has been determined to have a 15% ownership interest in the selected service provider from whom the applicant is requesting services, all funding requests that are associated with the cited Form 470 must be denied. Consequently, the appeal is denied.
- Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment, and preventing unfair competitive advantage.¹ A competitive bidding violation and conflict of interest exists when an applicant's contact, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected.
- FCC rules require applicants to seek competitive bids and in selecting a service provider to carefully consider all bids. FCC rules further require applicants to comply with all applicable state and local competitive bidding requirements.² In the May 23, 2000 *MasterMind Internet Services, Inc. (MasterMind)* appeals decision, the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.³ The FCC reasoned that under those circumstances, the Forms 470 were defective and violated the Commission's competitive bidding requirements, and that in the absence of valid Forms 470, the funding requests were properly denied? Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone and fax numbers, and email address.

¹See, e.g., 48 C.F.R. § 9.505(a), (b).

²See 47 C.F.R. §§ 54.504(a), 54.511(a).

³See 47 C.F.R. § 54.504(a), (b)(2)(vi).

⁴See *In re MasterMind Internet Services, Inc.*, CC Docket 96-45, ¶ 9 (May 23, 2000).

⁵See *id*

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If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be POSTMARKED within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Tom Snell
Union Parish School Board
Marian Highway
Farmerville, LA 71241



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2000-2001

October 17, 2003

Mark Stevenson, President
Send Technologies LLC
2904 Evangeline Street
Monroe, Louisiana 71201

Re: Union Parish School Board

Re: Billed Entity Number: 139313
471 Application Number: 163210
Funding Request Number(s): 405241
Your Correspondence Dated: April 1, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 2000 Funding Commitment Adjustment for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent,

Funding Request Number: 405241
Decision on Appeal: Denied in full
Explanation:

- You have stated on appeal that the appeal will provide clarifying information that corrects the erroneous assumptions made by the Schools and Libraries Division when it adjusted and rescinded funding that was granted to Send Technologies and Union Parish for Funding Year 2000. You state that there was no error during the initial review process regarding the Form 470 cited, but there was an error in a subsequent review due to insufficient information held by the SLD about Tom Snell and the competitive bidding process undertaken by Union Parish School Board. You state that listing Mr. Snell as the contact person on the Form 470 did in no way violate the intent of the bidding process and that the Union Parish Form 470 did not contain any service provider contact information. You state that

unlike all of the MasterMind type cases, Mr. Snell is an employee of the applicant (Union Parish School Board) and not an employee or representative of a service provider. You believe that the intent of the bidding process was fully observed and fulfilled in the case of Union Parish. You also state that Mr. Snell holds a fifteen percent minority ownership interest in Send Technologies and that he is not now, nor has he ever been an employee of Send. Mr. Snell is a passive investor in Send, and his ownership interest is substantially below that which could raise a question about a conflict of interest under any applicable law. You state that out of an abundance of caution, Mr. Snell disclosed his passive minority investment interest in Send to the appropriate local government officials after initial bids were received and Mr. Snell had realized that Send was bidding for Union Parish's services. You also state that the SLD's review of the previously approved and committed applications was prompted when the SLD learned of the Louisiana Audit that took place years after the competitive bidding process for Union Parish services. This matter was favorably resolved at the state level and the Louisiana Board of Ethics confirmed that that there was no violation of the state and local procurement processes to ensure competition and this finding is significant. You close the appeal by stating that the critical public interest policies served by the Commission's competitive bidding rules are to ensure that schools and libraries seeking support through the E-rate program obtain the most cost-effective services available; through Union Parish's competitive bidding process, there was a fair and open Competition for bidding of services; and at the end of the bidding process, Send was found to be the most cost-effective choice. You state that thus, the process Union Parish went through to choose Send explicitly met the public policy objectives that underlay the competitive bidding rules. Based on the facts stated, Send Technologies and Union Parish are therefore requesting that the SLD withdraw the issued Commitment Adjustment Letter and overturn the decision to rescind funding for this application.

- After a thorough review of the appeal, and upon review of the documentation (audit report from the State of Louisiana Legislative Auditor) which was obtained by the SLD, it was determined that Mr. Tom Snell, who is the authorized contact person listed on the cited Form 470 (Application Number: 482150000255298), also has a 15% ownership interest in the selected service provider (Send Technologies, LLC) as listed on the Form 471 application. According to the rules of the Schools and Libraries Program Support Mechanism (please see below), this is considered to be a conflict of interest (also see below) and is in violation of the competitive bidding guidelines, as the authorized contact person listed on the Form 470 cannot be associated in any way with a service provider as this violates the intent of the bidding process regarding fair and open competition. Based on this determination, the SLD Commitment Adjustment Letter that was issued on January 31, 2003, to the applicant and the related service provider informing them of the commitment adjustment that was made to this request (the rescinding of 580,900.40 in full) was properly justified and was done according to the rules of the Schools and Libraries Support Mechanism.

- Rules of the Schools and Libraries Support Mechanism require the applicant to provide a fair and open competitive bidding process. Per the SLD website, "In order to be sure that a fair and open competition is achieved, any marketing discussions you hold with service providers must be neutral, so as not to taint the competitive bidding process. That is, you should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow them to unfairly compete in any way. A conflict of interest exists, for example, when an applicant's contact person, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected." Since the applicant's consultant/contact person in this case has been determined to have a 15% ownership interest in the selected service provider from whom the applicant is requesting services, all funding requests that are associated with the cited Form 470 must be denied. Consequently, the appeal is denied.
- Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment, and preventing unfair competitive advantage.¹ A competitive bidding violation and conflict of interest exist when an applicant's contact person, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected.
- FCC rules require applicants to seek competitive bids and in selecting a service provider to carefully consider all bids.² FCC rules further require applicants to comply with all applicable state and local competitive bidding requirements.³ In the May 23, 2000, *MasterMind Internet Services, Inc. (MasterMind)* appeals decision, the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.⁴ The FCC reasoned that under those circumstances, the Forms 470 were defective and violated the Commission's competitive bidding requirements, and that in the absence of valid Forms 470, the funding requests were properly denied.⁵ Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone and fax numbers, and email address.

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³ See 47 C.F.R. § 54.504(a), (b)(2)(vi).

⁴ See *In re MasterMind Internet Services, Inc.*, CC Docket 96-45, ¶ 9 (May 23, 2000).

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If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be POSTMARKED within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Tom Snell
Union Parish School Board
Marian Highway
Farmerville, LA 71241



Universal Service **Administrative** Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2000-2001

October 17, 2003

Mark Stevenson, President
Send Technologies LLC
2904 Evangeline Street
Monroe, Louisiana 71201

Re: Union Parish School Board

Re: Billed Entity Number: 139313
471 Application Number: 160965
Funding Request Number(s): 385823
Your Correspondence Dated: April 1, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 2000 Funding Commitment Adjustment for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number 385823
Decision on Appeal: Denied in full
Explanation:

- You have stated on appeal that the appeal will provide clarifying information that corrects the erroneous assumptions made by the Schools and Libraries Division when it adjusted and rescinded funding that was granted to Send Technologies and Union Parish for Funding Year 2000. You state that there was no error during the initial review process regarding the Form 470 cited, but there was an error in a subsequent review due to insufficient information held by the SLD about Tom Snell and the competitive bidding process undertaken by Union Parish School Board. You state that by listing Mr. Snell, as the contact person on the Form 470 did in no way violate the intent of the bidding process and that the Union Parish

Form 470 did not contain any service provider contact information. Unlike all of the Master Mind type cases, Mr. Snell is an employee of the applicant (Union Parish School Board) and not an employee or representative of a service provider. You believe that the intent of the bidding process was fully observed and fulfilled in the case of Union Parish. You also state that Mr. Snell holds a fifteen percent minority ownership interest in Send Technologies and that he is not now, nor has ever been an employee of Send, Mr. Snell is a passive investor in Send, and his ownership interest is substantially below that which could raise a question about a conflict of interest under any applicable law. You state that out of an abundance of caution, Mr. Snell disclosed his passive minority investment interest in Send to the appropriate local government officials after initial bids were received and Mr. Snell had realized that Send was bidding for Union Parish's services. You also state that the SLD's review of the previously approved and committed applications was prompted when the SLD learned of the Louisiana Audit that took place years after the competitive bidding process for Union Parish services. This matter was favorably resolved at the state level and the Louisiana Board of Ethics confirmed that there was no Violation of the state and local procurement processes to ensure competition and this finding is significant. You close the appeal by stating that the critical public interest policies served by the Commission's competitive bidding rules are to ensure that schools and libraries seeking support through the E-rate program obtain the most cost-effective services available, through Union Parish's competitive bidding process, there was a fair and open competition for bidding of services, and at the end of the bidding process, Send was found to be the most cost-effective choice. Thus, the process Union Parish went through to choose Send explicitly met the public policy objectives that underlay the competitive bidding rules. Based on the facts stated Send Technologies and Union Parish are therefore requesting that the SLD withdraw the issued Commitment Adjustment Letter's and overturn their decision to rescind funding for this application.

- After a thorough review of the appeal, upon review of the documentation (audit report from the State of Louisiana Legislative Auditor) which was obtained by the SLD. It was determined that Mr. Tom Snell who is the authorized contact person listed on the cited Form 470 (Application Number: 462150000255298), also has a 15% ownership interest in the selected service provider (Send Technologies, LLC) as listed on the Form 471 application. According to the rules of the Support Mechanism (please see below) this is considered to be a conflict of interest (also see below) and is in violation of the competitive bidding guidelines, as the authorized contact person listed on the Form 470 cannot be associated in any way with a service provider as this violates the intent of the bidding process regarding fair and open competition. Based on this determination, the SLD Commitment Adjustment Letter that was issued on January 31, 2003 to the applicant and the related service provider informing them of the commitment adjustment that was performed on this request (the rescinding of \$63,000.00 in full) was properly justified and was in accordance according to the rules of the Support Mechanism.

- **Rules of the Support Mechanism** require the applicant to provide a fair and open competitive bidding process. Per the SLD website; "In order to be sure that a fair and open competition is achieved, any marketing discussions you hold with service providers must be neutral, so as not to taint the competitive bidding process. That is, you should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow them to unfairly compete in any way. A conflict of interest exists, for example, when an applicant's contact person, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected." Since the applicant's consultant/contact person in this case has been determined to have a 15% ownership interest in the selected service provider from whom the applicant is requesting services, all funding requests that are associated with the cited Form 470 must be denied. Consequently, the appeal is denied.
- **Conflict of interest principles** that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment, and preventing unfair competitive advantage.¹ A competitive bidding violation and conflict of interest exists when an applicant's contact, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected.
- **FCC rules require** applicants to seek competitive bids and in selecting a service provider to carefully consider all bids.² FCC rules further require applicants to comply with all applicable state and local competitive bidding requirements.³ In the May 23, 2000 *MasterMind Internet Services, Inc. (MasterMind)* appeals decision, the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.⁴ The PCC reasoned that under those circumstances, the Forms 470 were defective and violated the Commission's competitive bidding requirements, and that in the absence of valid Forms 470, the funding requests were properly denied.⁵ Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone and fax numbers, and email address.

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² See 47 C.F.R. §§ 54.504(a), 54.511(a).

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We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Tom Snell
Umon Parish School Board
Marian Highway
Farmerville, LA 71241



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 1999-2000

October 17, 2003

CC: Tom Snell
Union Parish School Board
Marian Highway
Farmerville, LA 71241

Re: Billed Entity Number: 139313
471 Application Number: 119672
Funding Request Number(s): 171021
Your Correspondence Dated April 1, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 1999 Funding Commitment Adjustment for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 171021
Decision on Appeal: Denied in full
Explanation:

- You have stated on appeal that the appeal will provide clarifying information that corrects the erroneous assumptions made by the Schools and Libraries Division when it adjusted and rescinded funding that was granted to Send Tecimologies and Union Parish for Funding Year 1999. You state that there was no error during the initial review process regarding the Form 470 cited, but there was an error in a subsequent review due to insufficient information held by the SLD about Tom Snell and the competitive bidding process undertaken by Union Parish School Board. You state that by listing Mr. Snell, as the contact person on the Form 470 did in no way violate the intent of the bidding process and that the Union Parish Form 470 did not contain any service provider contact information. Unlike all of the Master Mind type cases, Mr. Snell is an employee of the applicant (Union Parish School Board) and not an employee or representative of a service provider. You believe that the intent of the bidding process was fully observed and fulfilled in the case of Union Parish. You also state that Mr. Snell holds a fifteen percent

UNION PARISH SCHOOL
OCT 21 2003
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minority ownership interest in Send Technologies and that he is not now, nor has ever been an employee of Send, Mr. Snell is a passive investor in Send, and his ownership interest is substantially below that which could raise a question about a conflict of interest under any applicable law. You state that out of an abundance of caution, Mr. Snell disclosed his passive minority investment interest in Send to the appropriate local government officials after initial bids were received and Mr. Snell had realized that Send was bidding for Union Parish's services. You also state that the SLD's review of the previously approved and committed applications was prompted when the SLD learned of the Louisiana Audit that took place years after the competitive bidding process for Union Parish services. This matter was favorably resolved at the state level and the Louisiana Board of Ethics confirmed that there was no violation of the state and local procurement processes to ensure competition and this finding is significant. You close the appeal by stating that the critical public interest policies served by the Commission's competitive bidding rules are to ensure that schools and libraries seeking support through the E-rate program obtain the most cost-effective services available, through Union Parish's competitive bidding process, there was a fair and open competition for bidding of services, and at the end of the bidding process, Send was found to be the most cost-effective choice. Thus, the process Union Parish went through to choose Send explicitly met the public policy objectives that underlay the competitive bidding rules. Based on the facts stated Send Technologies and Union Parish are therefore requesting that the SLD withdraw the issued Commitment Adjustment Letter's and overturn their decision to rescind funding for this application.

- After a thorough review of the appeal, upon review of the documentation (audit report from the State of Louisiana Legislative Auditor) which was obtained by the SLD. It was determined that Mr. Tom Snell who is the authorized contact person listed on the cited Form 470 (Application Number: 716920000143248), also has a 15% ownership interest in the selected service provider (Send Technologies, LLC) as listed on the Form 471 application. According to the rules of the Support Mechanism (please see below) this is considered to be a conflict of interest (also see below) and is in violation of the competitive bidding guidelines, as the authorized contact person listed on the Form 470 cannot be associated in any way with a service provider as this violates the intent of the bidding process regarding fair and open competition. Based on this determination, the SLD Commitment Adjustment Letter that was issued on January 31, 2003 to the applicant and the related service provider informing them of the commitment adjustment that was performed on this request (the rescinding of \$23,124.00 in full) was properly justified and was done according to the rules of the Support Mechanism.
- Rules of the Support Mechanism require the applicant to provide a fair and open competitive bidding process. Per the SLD website; "In order to be sure that a fair and open competition is achieved, any marketing discussions you hold with service providers must be neutral, so as not to taint the competitive bidding process. That is, you should not have a relationship with a service provider prior

ta the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow them to unfairly compete in any way. A conflict of interest exists, for example, when an applicant's contact person, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected." Since the applicant's consultant/contact person in this case has been determined to have a 15% ownership interest in the selected service provider from whom the applicant is requesting services, all funding requests that are associated with the cited Form 470 must be denied. Consequently, the appeal is denied.

- Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment, and preventing unfair competitive advantage.¹ A competitive bidding violation and conflict of interest exists when an applicant's contact person, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected.
- FCC rules require applicants to seek competitive bids and in selecting a service provider to carefully consider all bids.² FCC rules further require applicants to comply with all applicable state and local competitive bidding requirements.³ In the May 23, 2000 *MasterMind Internet Services, Inc. (MasterMind)* appeals decision, the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.⁴ The FCC reasoned that under those circumstances, the Forms 470 were defective and violated the Commission's competitive bidding requirements, and that in the absence of valid Forms 470, the funding requests were properly denied.⁵ Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone and fax numbers, and email address.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be POSTMARKED within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference

¹ See, e.g., 48 C.F.R. § 9.505(a), (b).

² See 47 C.F.R. §§ 54.504(a), 54.511(a).

³ See 47 C.F.R. § 54.504(a), (b)(2)(vi).

⁴ See *In re MasterMind Internet Services, Inc.*, CC Docket 96-45, ¶ 9 (May 23, 2000).

⁵ See *id.*

Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

**Schools and Libraries Division
Universal Service Administrative Company**

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EXHIBIT 2

BEND

TECHNOLOGIES, L.L.C.

2904 Evangeline Street • Monroe, Louisiana 71201
Phone: 318.340.0750 ■ Fax: 318.340.0580
Web Address: <http://www.sendtech.net>

LETTER OF APPEAL

April 1, 2003

Via Facsimile (973) 599-6542

Letter of Appeal

Schools and Libraries Division

Box 125-Correspondence Unit

80 South Jefferson Road

Whippany, NJ 07981

Dear Administrator:

Please consider this letter and Exhibits as the consolidated Appeal of Send Technologies, LLC ("Send") relating to five Commitment Adjustment Letters ("CALs") (Exhibits 1 - 5) issued on January 31, 2003, by the Schools and Libraries Division of the Universal Service Administrative Company ("SLD"). This Appeal is consolidated because the stated basis of adjustment in each CAL is identical:

After thorough investigation, it has been determined that Tom Snell is associated with Send Technology, LLC, a service provider. Tom Snell is also the contact person on the Form 470 . . . that is referenced for this funding request. The Form 470 associated with this funding request contains service provider (SP) contact information, which violates the intent of the competitive bidding process. Competitive bidding violation occurs when a SP associated with the Form 470 participates in competitive bidding process as a bidder. As a result of the competitive bidding violation the SLD is rescinding the committed amount in full.¹

A. The Commitment Adjustment Letters: Each CAL, issued on January 31, 2003, relates to applicant Union Parish School Board ("Union Parish"). Additional detail about the SLD actions that are the subject of this consolidated Appeal follow:

¹ CALs at 4.

² Send is filing this consolidated Appeal with respect to the five CALs consistent with the advice of the SLD contained in the Service Provider Manual, Section 7, Post-Commitment Events, which states: "According to FCC rules, any party aggrieved by an action taken by USAC or SLD may appeal that decision. That means that Service Providers or applicants may

(c)

1. Funding Year: 1999-2000
Form 471 Application Number: 119672 ✓
Billed Entity Number: 139313
FRN: 171021
2. Funding Year: 1999-2000
Form 471 Application Number: 21741
Billed Entity Number: 139313
FRN: 175066
3. Funding Year: 2000-2001
Form 471 Application Number: 60965 ✓
Billed Entity Number: 139313
FRN: 385823
4. Funding Year: 2000-2001
Form 471 Application Number: 163210 ✓
Billed Entity Number: 139313
FRN: 405241
5. Funding Year: 2001-2002
Form 471 Application Number: 229706
Billed Entity Number: 139313
FRN: 594052

B. Contact Information: Please direct all inquiries regarding ~~this~~ consolidated Appeal to:

Mark Stevenson
Send Technologies, LLC
2904 Evangeline Street
Monroe, LA 71201
Telephone: (318) 340-0750
Fax: (318) 340-0580 FAX
E-mail: msteve@sendtech.net

C. Basis for Appeal

This Appeal provides clarifying information that corrects **erroneous** assumptions made by the Schools and Libraries Division (“**SLD**”) when it adjusted **and** rescinded funding granted to **Send and Union Parish** for the previously referenced funding years. The **SLD** made no error in its initial review of Union **Parish’s Form 470**, but there **was** error in a subsequent review of the application **due** to insufficient information held **by** the SLD about **Tom Snell** (“**Snell**”) and the competitive bidding process undertaken by Union Parish. This appeal will provide information **to** correct the **erroneous** assumptions held by the **SLD** that in listing **Snell** as the contact person,

file an appeal. (It would be best not to have both file an appeal, **unless** it's a consolidated appeal, raising the **same** issues.)” **SLD Service** Provider Manual § 7, available at <http://www.sl.universalservice.org/vendor/manual> (“*SP Manual*”).

Union Parish's Form 470 contained service provider contact information which violated the intent of the competitive bidding process. Union Parish's Form 470 did not contain service provider contact information. Unlike all of the other *MasterMind*-type cases, Snell is an employee of the applicant, Union Parish; Snell is not an employee or representative of a service provider. In addition, as this appeal will demonstrate, the intent of the Competitive bidding process was fully observed and fulfilled in the case of Union Parish.

D. Background

Union Parish, a school system in Farmerville, Louisiana, participates in the universal service support mechanism for schools and libraries, commonly called the "E-rate program" to obtain funding for basic telecommunications, Internet and Internal Connections services. Pursuant to the SLD's procedures, Union Parish submitted a Form 470 and sought bids for such services beginning in 1998. The contact person listed on the Form 470 was Tom Snell who, at that time, was Technology Systems Administrator for Union Parish. Snell did not sign any Form 470 or Form 471 for the years in question. In 2001, Snell became Superintendent of the school system.³

For each funding year, after Union Parish's Form 470 was accepted by the SLD, Union Parish complied with all SLD requirements regarding posting its Form 470 for competitive bids. Union Parish solicited numerous bids from local and national service providers for the school system's Internet services, including LDS, BellSouth, and UUNet Technologies, Inc. Donna Cranford, business manager for the school board, solicited the service quotes.⁴ (Exhibit 10) Upon receiving inquiries from numerous companies and contract bids from various companies in each funding year, Union Parish evaluated the bids. Because Send's service proposal would cost Union Parish one-fifth to one-half of what the other service providers offered for comparable services, Union Parish chose Send to provide it with Internet services. (Additional detail about other competitive bids is provided throughout this Appeal letter.)

When Union Parish submitted its Form 470, it could not have anticipated that Send would competitively bid for Union Parish's services. Given this, it was impossible for Union Parish to know when it filed its Form 470 that in listing Tom Snell, its own Technology Systems Administrator as the contact person, it would, in retrospect, raise a theoretical question about the fairness of the competitive bidding process. As the Technology Systems Administrator for Union Parish, Snell was the appropriate person to list on its Form 470.

Snell holds a fifteen percent minority ownership interest in Send. Snell is not now, nor has he ever been, an employee of Send, and Snell has never had any managerial authority over Send. Snell is a passive investor in Send, and his ownership interest is substantially below that which could raise a question about a conflict of interest under any applicable law. In fact, Snell's investment in Send and Send's participation in the competitive bidding for Union Parish's services did not violate any local procurement regulations for competitive bidding.

³ Immediately following Snell's appointment as Superintendent, and prior to notice of any audit, the district contacted the State Ethics Board for a ruling about the circumstances under which Send could continue to provide services to Union Parish (Exhibit 6).

⁴ Memorandum from Donna Cranford, Business Manager of Union Parish, to Finance Committee Members (May 11, 1998) ("Cranford Memo").

Nevertheless, out of an abundance of caution, Snell disclosed his passive, minority interest in Send to the appropriate local government officials after initial bids were received and Snell realized that Send was bidding for Union Parish's services. Snell contacted Mr. Mike Lazenby, superintendent of Union Parish from 1998 – 2001, who in turn contacted Mr. Steve Katz, attorney for Union Parish, and requested legal clarification of Snell's status with respect to any potential conflict of interest under the circumstances. Mr. Katz researched the statute and provided a written opinion to the Superintendent confirming compliance with State Ethics regulations (Exhibit 7). Mr. Katz requested and eventually received a written ruling from the State Ethics Board that under Louisiana law no conflict existed.⁵ Mr. Lazenby instructed Snell that any proposal or contract negotiations or decisions involving Send would be conducted by the Board or the Superintendent. Upon Lazenby's decision that Send offered the most cost-effective service proposal for Union Parish, the Business Manager for Union Parish provided a disclosure declaration to the Board regarding Snell's investment (Exhibit 8). Snell did not negotiate or execute any contract between Union Parish and Send. Superintendent Lazenby continued to personally evaluate proposals and conduct negotiations in each finding year, and Superintendent Lazenby initiated and approved all contracts with Send. Even though there was technically no conflict of interest, Union Parish went to great lengths to assure that any business it conducted with Send was purely at arm's length, and without any influence from Snell, either in reality or in perception.

Years later, upon Snell's appointment as Superintendent in 2001, a challenge regarding Snell's relationship with Send prompted an audit at the state level. The audit concerned whether Snell's minority interest in Send violated local or state procurement requirements. The standard in Louisiana is contained in the Code of Governmental Ethics at LSA R.S. 1102 et seq. at R.S. 111C(2):

No public servant and no legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, shall receive any thing of economic value for or in consideration of services rendered, or to be rendered, to or for any person during his public service,,.

Upon investigation, the Louisiana Board of Ethics confirmed that Snell's investment in Send, and the contract between Send and Union Parish, did not violate any state laws or raise any ethics issues. In a letter to Tom Snell dated January 24, 2002, the Louisiana Board of Ethics held the following:

The Board of Ethics, at its January 16, 2002 meeting, considered an investigation report generated as a result of allegations that you worked for and owned in excess of 25% of a company, Send Technologies, which did business with the Union Parish School Board while you served as an employee of the Union Parish School Board. The investigation report revealed that you owned only 15% of Send Technologies and that you were not an employee of Send Technologies. Further, you did not

⁵ Disclosure of all information was made to the district independent auditors in 1998 and each year thereafter. The independent auditors examined all transactions during the years in question and found no evidence of undue influence or a conflict of interest that would warrant exception. After the state audit report, the district independent auditors re-examined events regarding the State audit report and re-affirmed concurrence with their previous opinions of no exception (Exhibit 9).

participate in the initial contract between Send Technologies and the Union Parish School Board. . . . Based upon the information obtained, the Board concluded and instructed me to inform **you** that no violation of the Code of Governmental Ethics **was** presented by your ownership interest in Send Technologies⁶ (*Exhibit 11*)

On January 31, 2003, the **SLD** issued five commitment adjustment letters to Send and Union Parish rescinding funds totaling approximately \$309,000 that were allocated to them for Internet Services and Internal Connections in Funding Years 1999, 2000 and 2001. The **SLD** stated that the commitment adjustments were necessary because Snell is "associated with" Send, a service provider. Given this, the **SLD** found that the Form **470** contained service provider contact information, which violated the intent of **the** competitive bidding process for services under the E-rate program. According to the **SLD**, "a competitive bidding violation occurs when a [service provider] associated with the **Form 470** participates in the competitive bidding process as a bidder."

The **SLD's** review of Union Parish's Form **470** and Send's participation in the bidding process was prompted when the **SLD** learned of the previously described Louisiana audit that took place years after the competitive bidding for Union Parish's services. As previously discussed, this **matter was** favorably resolved at the state level and the Louisiana **Board** of Ethics confirmed that there **was no** violation of state procurement law. Since the E-rate program relies on state and local procurement processes to ensure competition, this finding is significant. Union Parish and Send complied **with all known** requirements.

Send urges the **SLD** to overturn the decisions to rescind funding commitments as detailed in the **CALs** and respectfully requests the **SLD** to consider the following:

- The **SLD's** requirement for competitive bidding was not violated and the intent of **the** competitive bidding process **was** fully satisfied;
- Union Parish's Form **470** does not contain **service** provider contact information and listing Snell as a contact person does not render Union Parish's Form **470** **per se** invalid;

⁶ Letter from Jennifer G. Magness, Louisiana **Board** of Ethics, to Tom Snell (Jan. 24, 2002) ("Board of Ethics Letter"). The records and documents resulting from the Board of Ethics' investigation, including the Board of Ethics Letter, are confidential under Section 1141 of the Louisiana Code of Governmental Ethics, **LSA RS 42:1141E**. Accordingly, Send requests that the Board of Ethics Letter and any portion of this appeal quoting it be given confidential treatment and withheld from public disclosure. In the event that any **person or** entity requests disclosure of the confidential information, Send requests that it be **so** notified immediately so that it **can** oppose the request or **take** other **action** to safeguard its interests **as** it deems necessary. After the **SLD** concludes its review of this **case**, Send requests the return of the confidential information to counsel within one month. However, in the event the **SLD** has reason to keep the confidential materials after the conclusion of its review, Send requests that all material be kept under protective seal.

⁷ **CALs** at 4.

- Union Parish held an open and fair competitive bidding process, in perception and in reality; and
- Send did not coerce Union Parish or otherwise interfere with the bidding process, in perception and in reality.

E. The SLD's Requirement for Competitive Bidding was not Violated and the Intent of the Competitive Bidding Process Was Satisfied.

The requirement for a competitive bidding process derives from Section 254(h)(1)(B) of the Communications Act, as amended: which provides that discounts under the schools and libraries universal service support mechanism must be given only for services provided in response to bona fide requests for services. Bona fide requests require fiscal responsibility by the applying schools and libraries and contracts with such applicants must be formed through a competitive bidding process. *The competitive bidding process ensures that a school or library seeking support will obtain the most cost-effective services available, thereby lessening the applicant's demand on universal service funds and increasing funds available to other applicants.*⁹

The intent of the competitive bidding process was not violated by Union Parish or Send in any way. The intent of the competitive bidding process, to ensure that Union Parish would obtain the most cost-effective services available, was satisfied in full and was not violated because Snell was listed as the contact person for Union Parish. Union Parish received Internet services at less than half the cost of competitors. Union Parish received Internal Connections services at rates that were a fraction of the costs charged by competitors in neighboring districts. In achieving contracts for the most-cost-effective services available, Union Parish not only benefited itself but also other participants in the E-rate program.

F. Union Parish's Form 470 Does Not Contain Service Provider Contact Information and Listing Snell As A Contact Person Does Not Render Union Parish's Form 470 Per Se Invalid.

Over the past several years, a line of Commission cases has developed, starting with *MasterMind Internet Services, Inc. ("MasterMind")*,¹⁰ discussing when the Commission's competitive bidding requirements have been violated." The cases generally hold that where an

⁸ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 251 *et seq*; see 47 U.S.C. § 254(h)(1)(B).

⁹ See *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 9028-29 (1997) ("USF Order").

¹⁰ *Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc.*, 16 FCC Rcd 4028 (2000).

¹¹ *Request for Review of Decisions of the Universal Service Administrator by Dickenson County Public Schools, Clintwood, Virginia*, 17 FCC Rcd 15747 (WCB2002) ("Dickenson"); *Request for Review of Decisions of the Universal Service Administrator by Consorcio de Escuelas y Bibliotecas de Puerto Rico, San Juan, Puerto Rico*, 17 FCC Rcd 13624 (WCB2002) ("Consorcio"); *Request for Review of Decisions of the Universal Service Administrator by College Prep School of America, Lombard, Illinois*, 17 FCC Rcd 1738 (CCB2002) ("College Prep"); *Request for Review of Decisions of the Universal*

FCC Form 470 lists a contact person for the applicant who is an employee or representative of a service provider, the FCC Form 470 is *per se* defective. In the most recent *MasterMind*-type case, *Dickenson*, the Commission interpreted the *MasterMind* precedent as follows:

In *Mastermind Internet Services, Inc.*, the Commission held that, where an FCC Form 470 lists a contact person who is an employee or representative of a service provider, the FCC Form 470 is defective. The Commission observed that the “contact person exerts great influence over an applicant’s competitive bidding process by controlling the dissemination of information regarding the services requested.” On this basis, the Commission found that “when an applicant delegates that power to an entity that also will participate in the bidding process as a prospective service provider, the applicant irreparably impairs its ability to hold a fair and open competitive bidding process.” It concluded that “a violation of the Commission’s competitive bidding requirements has occurred where a service provider that is listed as the contact person on the FCC Form 470 also participates in the competitive bidding process as a bidder.”¹²

There is a critical distinction between the *MasterMind* line of cases and Union Parish’s situation which makes it an error for the SLD to apply the general rule from *MasterMind* to Union Parish’s case. In *MasterMind* and its progeny, the Commission denied the applicants’ requests for funding because in each case an employee of the service provider was listed as the contact for the applicant. In this case, however, Snell was an employee of the applicant. A service provider was not listed as a contact on Union Parish’s Form 470, rather an employee of Union Parish was listed. In his capacity as Technology Systems Administrator for the school system, Snell was the most appropriate person to be listed as the contact person. Union Parish did not delegate the task of disseminating information regarding the services requested to Send. As previously described, Union Parish took the competitive bidding process seriously and handled all such matters itself.

The facts of the Union Parish case are in stark contrast to the fact pattern contained in the original *MasterMind* case. In *MasterMind*, an employee of the service provider, *MasterMind*, was listed as the contact person and this person prepared and distributed the RFPs to potential bidders. “In so doing, the Applicants surrendered control of the bidding process to an employee of *MasterMind*, a service provider that not only participated in the bidding process, but also was awarded the service contracts.”¹³ In Union Parish’s case, neither of these facts are present. Snell was not an employee of Send and Send did not prepare or distribute the bid requests for Union Parish, Union Parish was in charge of all aspects of the competitive bidding process.

MasterMind also notes that although price is the main factor in choosing a service provider through the bidding process, the application also should consider other factors if allowed by state and local procurement rules.¹⁴ Here, Union Parish complied with all state and

Service Administrator by A.R. Carethers SDA School, Houston, Texas., 16 FCC Rcd 6943 (CCB 2001) (“*Carethers*”).

¹² *Dickenson*, 17 FCC Rcd at 15748 (quoting *MasterMind*, 16 FCC Rcd at 4033).

¹³ *Mastermind*, 16 FCC Rcd at 4033.

¹⁴ *Id.* at 4030.

local rules, considered all factors allowed under those rules **and** a ruling from the State Ethics Board confirmed that Snell had no conflict of interest that would violate the local competitive bidding laws, Union Parish also considered price very carefully and chose Send, in large part, because their service proposal **was** the most cost-effective. Send's initial proposal was one-fifth the cost of **the** other competitive bid. In fact, Send's proposals for Internal Connections services were **less** than **those** awarded to vendors in surrounding districts.

Another distinguishing factor is that unlike *MasterMind*, in which the applicants **knew** in advance when they prepared the **470** that they were listing **an** employee of a service provider as the contact person, there is no way Union Parish could have **known** at the time it filed its Form 470 that Send could or would decide to competitively bid for Union Parish's services or that listing **Tom** Snell, Union Parish's Technology Supervisor, as the contact person, would, in retrospect, pose a theoretical threat to the competitive bidding process.

In *Carethers*, the Commission concluded that the person listed **as the** contact for a number of applicant schools in various states, Charles Scorpio, was an employee of, or affiliated with, the service provider.¹⁵ The Commission opined that Scorpio could not be **an** employee **of** the schools because the schools were spread over a number of states. It **was** never disputed that Scorpio **was an** employee of the service provider. **The Commission stated:**

In *MasterMind* . . . the Commission observed that the "contact person exerts great influence over **an** applicant's competitive bidding process **by** controlling the dissemination of information regarding the services requested." **On** this basis, the Commission found that "when **an** applicant delegates that power to **an** entity that also will participate in the bidding process **as a** prospective service provider, the applicant irreparably impairs its ability to hold **a** fair and open competitive bidding process."¹⁶

Unlike *Carethers*, Snell **was** not **an** employee of **a** service provider, he **was** employed by **the** school system. Union **Parish** did not delegate **the** dissemination of information regarding the services it was **requesting** to Send or any other service provider. Union Parish handled all such responsibilities itself, and other employees of the school system, not Snell, solicited and evaluated bids on Union **Parish's** behalf. To further protect **the** integrity of **the** process, Snell did not participate in the initial or **subsequent** contracts between Send **and Union Parish**. Union **Parish** conducted **a** fair and open competitive bidding process **and, as** a result, entered into the most cost-effective contract for services. Union **Parish's** process **was**, therefore, wholly consistent with **the** public interest requirements underlying the competitive bidding process.

In *College Prep*, **Douglas** LaDuron, the contact person on **the** applicants' Form 470s, **was** a representative of a service provider participating in **the** competitive bidding process." Similarly, in *Dickenson*¹⁸ **and Consorcio**,¹⁹ the contact person listed on the applicants' Form 470

¹⁵ *Carethers*, 16 FCC Rcd at 6948-49. Scorpio had an email address through the service provider, had **the same address as** the service provider, and the contact **person listed for the service provider** in the SLD's database **was Donna** Scorpio.

¹⁶ *Id.* at 6946.

¹⁷ *College Prep*, 17 FCC Rcd at 1745.

¹⁸ *Dickenson*, 17 FCC Rcd at 15748.

was an employee of **the** service provider. In College Prep, LaDuron negotiated the contracts with the service providers on behalf of the applicants **and** was an officer of the service provider. In deciding this case, the Commission reiterated its holding from *MasterMind* "that **an** applicant violates the Commission's competitive bidding requirements when it surrenders control of the bidding process to **a** service provider that participates in that bidding process. Such a surrender occurs when **an** applicant names a representative of the service provider **as** contact person on the Form 470."²⁰

In Union Parish's case, it did not name a representative of a service provider **as a** contact person on its **Form 470** and it did not surrender control of the bidding process to Send in any conceivable way. Even **though** there was technically no conflict of interest, Snell did not participate in evaluating or negotiating the contracts between Send **and** Union Parish. This responsibility was handled by the Superintendent of the school system at that time. Union Parish took its responsibilities under the E-rate program seriously, worked to ensure **an** open, fair competitive bidding process and, consistent with the program rules, selected the most cost-effective provider for the desired services.

G. Union Parish Held an Open and Fair Competitive Bidding Process in Perception and Reality.

Under the Commission's and the SLD's competitive bidding requirements, the applicant must retain control of the bidding process. Union Parish remained at all times in control of the bidding process **and** did not, in fact, delegate any of its power or responsibilities to Send, or create the appearance that such responsibilities were delegated. The **SLD's** current guidelines state that "[i]t is unlikely **that the** applicant can have a fair and open competitive process if the bids are submitted to **and** the evaluation is carried out by **a** representative or employee of a Service Provider who participated in the bidding process."²¹

A representative or employee of Send did not carry out the evaluation of competitive bids submitted to Union Parish. **As the** Technology Systems Administrator for Union Parish, Snell would have been the most appropriate person to carry out **this task**. Even **though** Snell's investment in Send was **far** below the level that would give rise to a conflict of interest, Snell was insulated from the evaluation of bids out of an abundance of caution by Union Parish who wanted to ensure that **the** competitive bidding process **was** absolutely fair in reality **and** in perception. **As** previously described, the solicitation **and** evaluation of bids, **and** the negotiating **and** contracting for services, **was** carried out by other employees of Union Parish and not **by any** service provider.

During the legislative audit involving Send and Union Parish, auditors interviewed dozens of current **and** former school personnel, Board members, **and** other parties. Consistent with the actions taken by Union Parish to ensure a fair competitive bidding process, there was no evidence that Snell **was** involved in the evaluation of bids. The Superintendent never related any personal involvement or influence by Snell or any coercion by Send. The Superintendent

¹⁹ *Consortio*, 17 FCC Rcd at 13626-27.

²⁰ *College Prep.*, 17 FCC Rcd at 1744.

²¹ *SP Manual* § 5.

expressed only confidence in the general technology plan of the school system **and** the outcome of their decision process.

During all funding years, Union Parish complied with **all** SLD requirements for competitive bidding by posting its Form 470 requests for services. Send provided quotations for continuation of Internet services in each year and for Internal Connections services in 1999 and 2000. Union Parish received quotations from various vendors for Internal Connections equipment and received inquiries from MasterMind (Internet services) and Icon Technologies (Internal Connections). Decisions were implemented by Union Parish for purchase of Internal Connections equipment from a variety of vendors. Send was selected to provide continuation of Internet Service in each year **and** part of the Internal Connections services in 1999 **and** 2000. Various other vendors were selected by the district **to** provide Telecommunications and Internal Connections for each **year**. (Exhibit 13) In each case, however, Send only participated **as** a bidding vendor. Snell was insulated **from** the process and **the** decision making. Perhaps the best evidence of the **arm's** length relationship between Union Parish and Send is reflected in the cost of services provided by Send to Union Parish. Send provided Internet costs in 1998 and 1999 that were one-fifth the cost of the next competitor.

There **was no** perception among other competitive bidders that because Snell was listed **as** the contact person on Union Parish's Form 470, that the competitive bidding process would not **be** carried out in a fair **and** impartial manner. Snell **was an** employee of Union Parish, not Send, **and** no other bidders were aware of his passive, minority interest in Send. The **only** individuals who knew of Snell's interest were the Superintendent of the school system, the attorney for the school system **and** the Business Manager, **and** all of these individuals took steps to ensure the fairness of **the** process in reality and in perception. Union Parish decided that if Send was chosen **as the** service provider after all competitive bids were evaluated, then it would disclose Snell's minority ownership interest to the Union Parish School Board. On May 11, 1998 when Send was chosen, Snell's investment was disclosed to the School Board. This disclosure **was** made out of **an** abundance of caution even **though** Snell's interest is substantially below the threshold of ownership interest that could give rise to any ethics concern or **any** potential violation of state procurement laws for competitive **bidding**.²²

H. Send Did Not Coerce Union Parish or Otherwise Interfere with the Bidding Process, in Perception or in Reality.

The Commission and the SLD have also expressed concern that service providers may coerce applicants or otherwise interfere with **the** competitive bidding process under the E-rate program, stating that the program is "built on a foundation of state **and** local procurement laws" **and** that to coerce or put pressure on **an** applicant to use a specific service provider would violate those rules.²³ The SP Manual provides that:

The E-rate Program relies on state and local procurement processes to ensure competition in **the** provision of services. In order to participate in the E-rate Program, **the** Service Provider must comply with all state and local procurement rules **and** regulations. If the local jurisdiction has

²² Cranford Memo; Regular Meeting Minutes of Union Parish (May 11, 1998).

²³ SP Manual § 5.

restrictions on who can respond to their bids, for example, the Service Provider must meet those restrictions.²⁴

Send cannot be found to have coerced or otherwise interfered with the bidding process undertaken by the school system. The E-rate program relies on state and local procurement processes to ensure competition, and both Union Parish and Send complied with the state and local rules.

Union Parish took all necessary steps to ensure that it complied with the Commission's and SLD's bidding requirements. In order to begin the procurement process for Funding Year 1999-2000, Union Parish submitted its Form 470 in January 1998. At this point, there was little guidance regarding who could and could not be listed as a contact on the Form 470. MasterMind was not decided until May 2000. The then current competitive bidding procedures required that applicants participating in the E-rate program follow local and state procurement requirements.²⁵ As previously discussed, the local and state ethics requirements in Louisiana prevent a company in which a public employee has at least a 25 percent controlling interest to bid on or enter into any contract with the agency at which the public servant is employed.²⁶ Send, Snell and Union Parish were in full compliance with this law, a fact that was later demonstrated in the Katz letter of 1999 and confirmed by the Louisiana Board of Ethics. Since the E-rate program relies on state and local procurement processes to ensure competition, this point is critical. Based upon the then current competitive bidding guidelines and FCC case law, Union Parish could not have anticipated that listing a person who is their own employee as the contact person would violate the competitive bidding rules, especially in light of the fact that the school system could not foresee that Send would even respond to Union Parish's Form 470.

Although bids may be accepted based upon factors independent of the cost of services, the Commission recommends that cost should be the most relevant factor when an applicant is reviewing bids for services. The theory, presumably, is that if an applicant chooses the lowest cost provider, there is a presumption that their decision was not coerced for other illegitimate reasons but, rather, driven by the bottom line. In 1998, and thereafter, Union Parish judged Send to be the low-cost provider after a complete evaluation of the service offerings and pricing submitted by competitive bid. Quotations for Internet Service in subsequent years never exceeded half the cost presented by the initial 1998 competitive bidder. Internal connections quotes in 1999 and 2000 were received and considered by the Superintendent. Union Parish received a quotation from Mastermind in 1999 and inquiries from Icon Technologies in 1999 and 2000, but their costs were several times greater than the proposal of Send and therefore they were not selected. Union Parish observed three surrounding parishes contracting for Internal Connections services with Icon Technologies, CompStar Plus, and FirstCo, all at significantly

²⁴ *Id.* § 4.

²⁵ See *USF Order*, 12 FCC Rcd at 9079; see also *Federal-State Joint Board on Universal Service*, 15 FCC Rcd 6732, 6733-34 (CCB 1999) ("[E]nabling schools and libraries to post relatively simple requests on a website would provide a minimally burdensome means for them to get competing providers to approach them, so that schools and libraries could then select the best service packages subject to their state and local rules The school or library must then ... 'carefully consider all bids submitted' before selecting a provider subject to state or local procurement rules." (emphasis added)).

²⁶ La. R.S.42:1113.

higher cost for less services. These observations further confirm the integrity of the Union Parish competitive bidding process.

There was **no** perception of coercion in contracting between **Union Parish** and Send. The Commission reasoned in *MasterMind* that the participation of the contact person listed on the Form 470, if that contact person **also** represents the service provider, **may** impact the submission of bids by other prospective bidders, which may undermine **the** ability of the applicant to obtain the most cost-effective bid. "For example, a prospective bidder may choose not to participate in a competitive bidding process if it believes that the bidding will not be conducted in **an** open and fair **manner**, given that another bidder is serving as the contact **person**."²⁷ Send, however, did not exert such influence over the bidding process, and there was no perception of such influence. Snell was **an** employee of Union Parish and he never represented Send during the competitive bidding process. No evidence is present to show that **any** competitor **was** even aware of Snell's passive investment in Send. Given all the steps Union Parish took to ensure the fairness of the competitive bidding process, no coercion could have taken place, nor **was** there **any** perception of coercion.

I. Summary.

The content of this consolidated Appeal should assist the SLD in reaching the conclusion that it was under erroneous assumptions regarding Snell **and** Union Parish's competitive bidding process. Union Parish's **Form 470** **does** not contain service provider contact information, and the competitive bidding process undertaken by Union Parish fully satisfied the intent of the SLD in requiring competitive bidding. Union Parish obtained the **most** cost-effective services available, which is **a** benefit **to all** participants in the E-rate program, just **as** the Commission intended. **The** fact pattern of Union Parish's case cannot **justify** a *MasterMind*-type result by the SLD.

Snell is an employee of Union Parish, the applicant. (**Exhibit 12**) Snell **is** not a service provider or **an** employee of **a** service provider, **and** Snell did not represent the interests of a service provider in the competitive bidding process. Send **only** participated in the competitive bidding process as a bidder. **The** dealings of Union Parish with **all** bidders, including Send, were at **arms** length. There **was** no appearance to anyone involved in the process that Send influenced Union Parish's decision making in any way. Union Parish went to great lengths to verify compliance with Federal, State **and** local policies **and** regulations **and** to ensure the fairness of the process, in reality **and** in perception. Mr. Snell **was** listed as **the** technical contact person only to fulfill his capacity **as** Technology Systems Administrator in the district. Considerable evidence is present to demonstrate the integrity of **the** competitive bidding process undertaken by Union Parish.

There **is** no **way** Union Parish could have **known** at the time it filed its Form 470 that Send could or would decide to competitively bid for Union Parish's services or that listing **Tom** Snell, Union Parish's employee, **as** the contact person, would, in retrospect, pose a theoretical threat to the competitive bidding process. Neither Union Parish nor Send violated Commission directives regarding the competitive process or the intent of the competitive bidding process, in **any** way. The competitive bidding process **by** which Send **was** chosen **as** a service provider for Union Parish **was** open and **fair** **and** **was** not, in fact, compromised by listing Snell **as** the school system's contact person on its Form 470. None of Union Parish's **responsibilities** to **ensure** **an**

²⁷ *MasterMind*, 16 FCC Red at 4033.

open and fair competitive bidding process and to select the most cost-effective provider of services were surrendered or delegated to Send, or any representative of Send. Send did **not exert** any influence over Union Parish during the competitive bidding process and, in order not to influence Union Parish's decision **making** process in any way, Snell's passive investment in Send was disclosed **and** Snell was insulated from the process.

The critical public **interest** policies served by the Commission's competitive bidding rules are **to** ensure that **schools** and libraries seeking support through the E-rate program obtain the most cost-effective services available, thereby lessening the applicants demands on universal service funds and increasing **funds** available **to** other applicants. **Through** Union Parish's competitive bidding process, there was fair **and** open competitive bidding for services, and at the end of the bidding process, Send **was** found to be most cost-effective choice. **Thus**, the process **Union** Parish went through to choose Send explicitly met the public policy objectives that underlay the competitive bidding rules.

Mr. Steve Katz, General Counsel for **Union** Parish School Board, has reviewed this appeal and confirmed the facts **as** they pertain to Union Parish School **Board** (Exhibit **14**).

Send Technologies and **Union Parish** are therefore requesting **that** the **SLD** withdraw the aforementioned CALs and **overturn** their decisions to rescind funding.

Sincerely,



Mark Stevenson
President
Send Technologies LLC

Attachment: Exhibits I - 14

EXHIBITS

Exhibit 1 – 5	Funding Commitment Reports
Exhibit 6	Letter of Steve Katz March 13,2003; Ethics Report
Exhibit 7	Letter of Steve Katz May 19, 1998
Exhibit 8	Disclosure Letter
Exhibit 9	Board Minutes; Independent Auditor Opinion
Exhibit 10	Original Service Proposals Internet Access 1998
Exhibit 11	Ethics Letter of January 24,2002; Disqualification Plan
Exhibit 12	Job Description
Exhibit 13	Union Parish Vendor Requests 1998 – 2002
Exhibit 14	Letter of Steve Katz March 28,2003

Funding Commitment Report for Application Number: 119672

Funding Request Number: 171021 **SPIN: 143010002**

Service Provider: Send Technologies, L.L.C.

Contract Number: **47796**

Services Ordered: INTERNET ACCESS

EXHIBIT 1

Site Identifier:

Billing Account Number:

Adjusted **Funding** Commitment: \$0.00

Funds Disbursed to Date: \$23,124.00

Funds to **be** Recovered: \$23,124.00

Funding Commitment Adjustment Explanation:

After thorough investigation it has been determined that **Tom** Snell is associated with Send Technology LLC, a service provider. **Tom Snell** is also the contact person on the **Form 470: 143010002** that is referenced for this finding request. The **Form 470** associated with this funding request contains service provider (SP) contact information, which violates the intent of the competitive bidding process. Competitive bidding violation occurs when a SP associated with the **Form 470** participates in competitive bidding process as a bidder. As a result of the competitive bidding violation the **SLD** is rescinding the committed amount in full.

Funding Commitment **Report** for Application **Number: 121741**

Funding Request Number: 175066 **SPIN: 143010002**

Service Provider: Send Technologies, L.L.C.

Contract Number: 4789G

Services Ordered: INTERNAL CONNECTNS_5

EXHIBIT 2

Site Identifier:

Billing Account Number:

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$126,360.00

Funds to be Recovered: \$126,360.00

Funding Commitment Adjustment Explanation:

After thorough investigation it **has been** determined that **Tom** Snell is associated with **Send** Technology LLC, a service provider. **Tom** Snell **is also** the contact person on the **Form 470: 143010002** that is referenced for this funding request. The **Form 470** associated with this funding request contains service provider (SP) contact information, which violates the intent of the competitive bidding process. Competitive bidding violation occurs **when a** SP associated with the **Form 470** participates in competitive bidding process **as** a bidder. **As a** result of the competitive bidding violation the **SLD** is rescinding the committed **amount** in full.

Funding Commitment Report for Application Number: 160965

Funding Request Number: **385823** SPIN: **143010002**

Service Provider: Send Technologies, L.L.C.

Contract **Number:** 57700

Services Ordered: **INTERNET ACCESS**

EXHIBIT 3

Site Identifier:

Billing Account **Number:** 318-368-9715

Adjusted Funding commitment: \$0.00

Funds Disbursed to Date: \$63,000.00

Funds to be Recovered: \$63,000.00

Funding Commitment Adjustment Expianation:

After thorough investigation it has been determined that Tom Snell is associated with Send Technology **LLC**, a service provider. Tom Snell is also the contact person on the Form **470:** 143010002 that is referenced for this funding request. The **Form 470** associated with this funding request contains service provider (SP) contact information, which violates the intent of the competitive bidding process. Competitive bidding violation **occurs** when **a SP** associated with the Form **470** participates in competitive bidding process **as a bidder**. **As** a result of the competitive bidding violation the **SLD** is rescinding the committed amount **in full**.

(--

Funding Commitment Report for: Application Number: 163210

Funding Request Number: **405241** **SPIN:** 143010002

Service Provider: **Send Technologies, L.L.C.**

Contract ~~Number:~~ **57716**

Services Ordered: **INTERNAL CONNECTIONS**

EXHIBIT 4

Site Identifier:

Billing Account Number: 318-368-9715

Adjusted Funding Commitment: **\$0.00**

Funds Disbursed **to Date:** **\$67,288.40**

Funds **to be Recovered:** **\$67,288.40**

Funding Commitment Adjustment Explanation:

After thorough investigation it has been determined ~~that~~ Tom **Snell** is associated with Send Technology LLC, a service provider. Tom **Snell** is also the contact person ~~on the~~ Form 470: **143010002** that is referenced for this funding request. The **Form 470** associated ~~with~~ this funding request contains service provider (**SP**) contact information, which violates the intent of the competitive bidding process. Competitive bidding violation ~~occurs~~ when a **SP associated with** the **Form 470** participates in competitive bidding process ~~as~~ a bidder. ~~As a result of~~ the competitive bidding violation the **SLD is** rescinding the committed ~~amount~~ in full.

Funding Commitment Report for Application Number: 229706

Funding Request Number: **594052** SPTN: **143010002**

Service Provider: Send Technologies, L.L.C.

Contract Number: 81320

EXHIBIT 5

Services Ordered: INTERNET ACCESS

Site Identifier:

Billing Account Number: **318-368-9715**

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$29,625.00

Funds to be Recovered: \$29,625.00

Funding ~~Commitment~~ Adjustment Explanation:

After thorough investigation it has been determined that Tom Snell is associated with Send Technology LLC, a service provider. Tom Snell is also the contact person on the Form 470: 143010002 that is referenced for this funding request. The Form 470 associated with this funding request contains service provider (SP) contact information, which violates the intent of the competitive bidding process. Competitive bidding violation occurs when a SP associated with the Form 470 participates in competitive bidding process as a bidder. As a result of the competitive bidding violation the SLD is rescinding the committed amount in full.

JAMES E. YELDELL
ALEX W. RANKIN
STEPHEN J. KATZ

LAW OFFICES
RANKIN, YELDELL & KATZ
A PROFESSIONAL LAW CORPORATION
411 SOUTH WASHINGTON
BASTROP, LOUISIANA 71220

TELEPHONE
BASTROP
318-281-4913

FAX
318-281-9819

March 13, 2003

EXHIBIT 6

**FORWARDED VIA
FAX ONLY: 202-418-6957**

Mr. Greg Lipscomb
Federal Communications **Commission**
Telecommunications **Access** Policy Division
Wireline Competition Bureau
Room 5-A426, 445 12th Street, SW
Washington, D.C. 20554

**FORWARDED VIA
FAX ONLY: 703-653-7419**

Mr. Mel Blackwell
Vice President External Communications
2120 L Street, N.W. Suite 600
Washington, D.C. 20037

RE: Union Parish School Board and
SEND Technologies, LLC.

Dear **Mr. Lipscomb** and **Mr. Blackwell**;

On behalf of the Union Parish School Board I am submitting to you information which substantiates the compliance by the Union Parish School Board and SEND Technologies with Louisiana Ethical Practices as set forth in the Louisiana Revised Statutes and implemented and enforced by the Louisiana Board of Ethics.

The Louisiana Board of Ethics, as a result of a complaint received by it, conducted an investigation of the legal relationship of SEND Technologies, LLC. with the Union Parish School Board. The investigation was first brought to the attention of the Union Parish School Board by letter dated May 22, 2001 from the Louisiana Board of Ethics to Mike Lazenby, the Superintendent of the Union Parish School Board. That letter is attached as Exhibit 1. After the collection of much information by the Louisiana Board of Ethics and the completion of its investigation, it determined that there was no violation of the Louisiana Code of Governmental Ethics. That is confirmed by the letter of January 24, 2002 attached as Exhibit 2 and the letter of February 19, 2002 attached as Exhibit 3. Furthermore, under Louisiana law, the Union Parish School Board is required to undergo an independent audit by a certified public accounting firm on a yearly basis. The firm of Allen, Green & Company, L.L.P. presented its audit report to the Union Parish School

Page #2

Board for the year ending June 30, 2002 at the meeting of the Union Parish School Board on February 10, 2003. A copy of the minutes of the regular meeting of the Union Parish School Board of February 10, 2003 is also attached. The second paragraph on page 3 of those minutes reflects the report of the auditor.

Accordingly both the Louisiana Board of Ethics and the independent auditor determined there were no violations of law or the Code of Governmental Ethics despite the unfounded complaints that may have been received.

Should you desire any additional information that I can provide, please feel free to contact me.

Sincerely,

RANKIN, YELDELL & KATZ
(A PROFESSIONAL LAW CORPORATION)

BY: 

Stephen J. Katz

Sjk/mt

encl.

I:\MYRA\KATZ\UPSB\GENERAL\Blackwell.Mel.wpd



STATE OF LOUISIANA
DEPARTMENT OF STATE CIVIL SERVICE
LOUISIANA BOARD OF ETHICS
8401 UNITED PLAZA BOULEVARD
SUITE 200
BATON ROUGE, LA 70809-7017
(225) 922-1400
FAX: (225) 922-1414
1-800-842-6630
www.ethics.state.la.us

CONFIDENTIAL

Disclosure of any
information contained
herein or in connection
herewith is a criminal
misdemeanor pursuant to
LSA-R.S. 42:1141E(12)-(13)

February 19, 2002

Tom Snelf
-s/o his attorney
Stephen Katz
411 South Washington
Bastrop, LA 71220

RE: Ethics Board Docket No. 2001-280

Dear Mr. Snell:

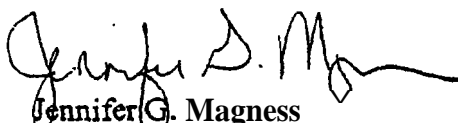
The Board of Ethics, at its February 14, 2002 meeting, considered additional information regarding your relationship with Send Technologies which contracts with the Union Parish School Board. The information revealed that partnership income from Send Technologies was erroneously reported by a part-time bookkeeper as wages. However, you did not work for Send Technologies. Based on the information provided, the Board concluded and instructed me to inform you that it declined to reopen the file with respect to that issue.

Further, you submitted a proposed disqualification plan whereby the Union Parish School Board would handle any matters involving the current contract between Send Technologies and the school system. Also, if Send Technologies provides services to the Union Parish School Board in the future, that such services will be provided free of charge. Based on the information submitted, the Board concluded and instructed me to inform you that the file in this matter will be closed once the disqualification plan is submitted to the Board as a public disclosure statement.

If you have any questions, please feel free to contact me.

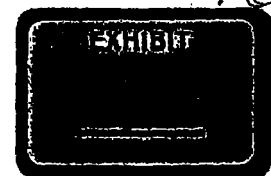
Sincerely,

LOUISIANA BOARD OF ETHICS


Jennifer G. Magness
For the Board

EB:JGM

AN EQUAL OPPORTUNITY EMPLOYER



LAW OFFICES
RANKIN, YELDELL, HERRING & KATZ
A PROFESSIONAL LAW CORPORATION
411 SOUTH WASHINGTON
BASTROP, LOUISIANA 71220

JAMES E. YELDELL
ALEX W. RANKIN
CHARLES B. HERRING, JR.
STEPHEN J. KATZ
E. ROSS DOWNS, JR.

TELEPHONE
BASTROP
318-281-4913
MONROE
318-387-5724
FAX
318-281-2819

May 19, 1998

EXHIBIT 7

**FORWARDED VIA
FIRST CLASS MAIL and
FAX: 368-3311 (45)**

Mr. Mike Lazenby, Superintendent
Union Parish School Board
P.O. Box 308
Farmerville, LA 71241

Dear Mr. Lazenby:

I have received the information you forwarded to me in regard to "Send Technologies."

The attached copy that was provided to you of LSA - R.S. 42:1113 is not applicable to the situation. Section D.(2) only applies to Section D. legislators. It never applied to Section A. In addition subparagraph (e) of Section D.(2) was repealed by Act No. 1156 of the 1997 legislative session, effective July 15, 1997.

Subsection A. of Section 1113 is applicable and provides in pertinent part:

A. No public servant, ... or member of such public servant's immediately family, or legal entity in which he has a controlling interest shall bid on or enter into my contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant.

Section 1102 defines the term "controlling interest" in subsection(8) as follows:

Ownership by an individual or his spouse, either individually or collectively, of an interest which exceeds twenty-five percent of any legal entity.

RECEIVED
MAY 20 1998
FBI - BASTROP

Mr. Lazenby
Page #2

It appears as if from the information you provided to me that Mr. Snell has a fifteen percent interest in "Send Technologies" and that Ms. Earle has approximately a fifteen percent interest. Neither has a "controlling interest." I have found no specific case law or Attorney General opinion dealing with an issue wherein two public employees have an interest in an entity which is going to do business with a public-body and neither owns twenty-five percent but together they own more than twenty-five percent.

In addition the phrase in Section 1113A, "under the supervision or jurisdiction of the agency of such public servant" would generally mean that the technology issue would have to be under the jurisdiction and control of either Mr. Snell or Ms. Earle. I understand it would probably be under the supervision or jurisdiction of Mr. Snell, but probably not under the jurisdiction or supervision of Ms. Earle.

Based upon the information that I provided above and my understanding of the ownership interests, I believe the Union Parish School Board could enter into the proposed contractual arrangement with "Send Technologies." I also believe it could be appropriate to simply provide the information that Donna suggested in her May 11, 1998 memo so that no one later could claim it was "hidden", but I am not aware of a specific legal requirement for it.

Should you or any members of the Board or your staff have any further questions in regard to the matter please contact me.

With kindest regards, I remain

Very truly yours,

RANKIN, YELDELL, HERRING & KATZ
(A PROFESSIONAL LAW CORPORATION)

By: 

Stephen J. Katz

SJK\mt

Union Parish School Board

Post Office Box 308
Farmerville, Louisiana 71241

Mike Lazenby
Superintendent

Phone (318) 368-9715
FAX (318) 368-3311

EXHIBIT 8

TO: FINANCE COMMITTEE MEMBERS.

FROM: W N N A CRANFORD, BUSINESS MANAGER

DATE: 5-11-98

RE: INTERNET SERVICES

THE UNION PARISH SCHOOL BOARD HAS BEEN RECEIVING THE PARISH'S INTERNET SERVICES THRU MONROE CITY SCHOOLS. THESE SERVICES HAVE BEEN IN PLACE FOR ABOUT THE LAST 18 MONTHS AND HAVE SERVED OUR SYSTEM WELL. HOWEVER, MONROE CITY SCHOOLS WILL NO LONGER BE ABLE TO PROVIDE THESE SERVICES ONCE THE E-RATE GOES INTO EFFECT.

THIS SITUATION WAS DISCUSSED AT OUR LAST FINANCE COMMITTEE MEETING, AND I WAS ASKED TO REQUEST QUOTES FROM VENDORS THAT COULD SERVE OUR SYSTEM, AND REPORT BACK TO THE COMMITTEE.

WE SOLICITED QUOTES FROM NATIONAL AND LOCAL PROVIDERS, SUCH AS UNUNET, WHICH IS ONE OF THE LARGEST INTERNET PROVIDERS LOCATED IN DALLAS. ONLY TWO COMPANIES REPLIED WITH A WRITTEN QUOTE, HOWEVER, WE DID RECEIVE SEVERAL CALLS FROM THE COMPANIES THAT WERE CONTACTED. AS A POINT OF DISCLOSURE, ONE OF THE BIDS RECEIVED WAS FROM SEND TECHNOLOGIES, L.L.C. MR. TOM SNELL AND MRS. BOBBIE EARLE ARE ASSOCIATED WITH SEND TECHNOLOGIES, L.L.C AS MEMBERS OF THE LIMITED LIABILITY COMPANY. A MEMBER OF AN LLC IS AN INDIVIDUAL WHO MAY BE IN THE EMPLOY OF THE COMPANY AND/OR MAY HAVE A SHARE IN FUTURE PROFITS OF THE COMPANY. UNDER THE OPERATING AGREEMENT OF SEND TECHNOLOGIES MR. MARK STEVENSON SERVES AS THE MANAGER OF THE LLC AND REPRESENTS THE COMPANY FOR CONTRACTUAL TERMS. THE PROPOSAL TO CONTRACT WITH SEND FOR INTERNET SERVICES REPRESENTS SERVICES WHICH ARE NOT IN THE JOB DESCRIPTION OF ANY EMPLOYEE OF UNION PARISH AND WOULD BE CONTRACTED TO AN OUTSIDE FIRM UNDER NORMAL CONDITIONS. THE OTHER QUOTE THAT WAS RECEIVED WAS FROM LDS IN MONROE. A COMPARISON OF THE TWO QUOTES IS ATTACHED.

AFTER REVIEWING THE QUOTES, IF SEND TECHNOLOGIES, L.L.C, IS ELECTED TO PROVIDE INTERNET SERVICES TO UNION PARISH SCHOOL BOARD, THE ABOVE DISCLOSURE WILL NEED TO BE MADE IN THE BOARD MEETING AND THE AMOUNT OF THE CONTRACT WILL ALSO NEED TO BE STATED. (A COPY OF THE CONTRACT IS ATTACHED)

"An Equal Opportunity Employer"

REGULAR MEETING, UNION PARISH SCHOOL BOARD

February 10, 2003

EXHIBIT 9

The Union Parish School Board met in Regular Session at the Union Parish School Board Office in Farmerville, Louisiana, on February 10, 2003 at 6:00 p.m. All members were present as follows: Mr. Robert C. James, Jr., Mrs. Marcia Harrell, Mr. Michael Holley, Mrs. Barbara Yarbrough, Mr. Howard Allen, Mr. Glyn Nale, Mr. Charlie Albritton, Mr. Ronnie Jones, and Mr. Marcus Watley.

President Allen called the meeting to order and Mr. Nale gave the invocation.

On motion by Mr. Jones, seconded by Mr. Nale, the Board approved the agenda for the February 10, 2003 Board Meeting with the omission of the following item, "Employment of Farmerville High School Football Coach".

On motion by Mr. Holley, seconded by Mrs. Yarbrough, the Board approved the minutes for the January 13, 2003 Board Meeting as printed.

President Allen named the following Union Parish School Board committees for 2003:

Finance Committee -

Howard Allen, Chairman
Marcia Harrell
Glyn Nale

Policy Committee -

R. C. James, Jr., Chairman
Barbara Yarbrough
Ronnie Jones

Transportation Committee -

Mike Holley, Chairman
Marcus Watley
Charlie Albritton

Personnel Committee -

Ronnie Jones, Chairman
Howard Allen
Glyn Nale

Buildings and Grounds Committee -

Glyn Nale, Chairman
Charlie Albritton
Michael Holley

Academic/Curriculum Committee

Marcia Harrell, Chairman
Barbara Yarbrough
R. C. James, Jr.

Henry Hamilton met with the Board to discuss the **FINIS** (Families In Need of Service) **Program** with the Board. This item was referred to the Finance Committee.

On motion by Mr. Nale, seconded by Mr. Jones, the Board approved an extended **sick** leave for the following teacher:

1. Glenda Elford - Downsville High School
Effective: November 11 - December 20, 2002

On motion by Mr. James, seconded by Mrs. Harrell, the Board approved the employment of the following In School **Suspension** Teacher Aide:

1. Margaret Crawford - Marion High School
Effective: January 6, 2003

Superintendent Snell reported to the Board on the following School Food Service Manager entering in the Deferred Retirement Option Program:

1. Maxine Skafins - Farmerville Elementary School
Cafeteria Manager
Effective: January 21, 2003

A motion was made by Mr. Nale, seconded by Mr. Albritton, for the Board to approve the employment of the following **School Food** Service worker:

1. Pam Ebarb - Farmerville Elementary School
Technician 4.5 hours per day
Effective: January 21 - May 22, 2003

The motion canid.

Superintendent Snell reported to the Board on the following School **Food** Service **worker** resignation:

1. Melanie Ramsey - Spearsville High School
Effective: February 19, 2003

Superintendent Snell reported to the Board on the following Federal Programs Printer/Van Driver entering into the Deferred Retirement Options Program:

1. Charles K. Crow - Central Office
Effective: February 5, 2003

On motion by Mr. Nale, seconded by Mr. Holley, the Board approved the monthly financial statements,

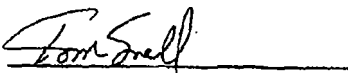
Tim Green, Certified Public Accountant of Allen, Green, and Company, LLP, presented the audit report for the Union Parish School Board for the year ending June 30, 2002. Mr. Green reviewed the audit report and further stated that his firm had reviewed the report of the legislative auditor and management response thereto together with the information from the Ethics Commission regarding SEND Technologies and stated his company was comfortable with its findings and the management response and as a result there were no findings in the audit report in regard thereto and the audit report prepared by his company was an unqualified report and opinion. Mrs. Harrell moved that the audit report as presented by Mr. Green be approved and adopted by the Board. Mr. Jones seconded the motion. The motion passed unanimously.


On motion by Mr. Albritton, seconded by Mr. Holley, the Board granted permission to receive bids on the sale of school buses.

On motion by Mrs. Harrell, seconded by Mr. Jones, the Board granted permission to bid large and small equipment for use in the Union Parish School Food Service Program for 2003-2004.

On motion by Mr. Jones, seconded by Mr. Nale, the Board approved a request from Robert Edwards to transfer the lease on Hooker Hole Lot #45 and sell his improvements.

On motion, by Mr. James, seconded by Mr. Watley, the Board having set its next regular Board Meeting for Monday, March 10, 2003 at 6:00 p.m. to be held at the Union Parish School Board Office in Farmerville, Louisiana, adjourned on this the 10th day of February, 2003.


Tom Snell, Secretary
Union Parish School Board


Howard Allen, President
Union Parish School Board

Internet Services Proposals:

LDS

1. Provides **no service** on the network server
2. Provides user **service** only on dial-up accounts
3. Requires an additional equipment cost that **must be** purchased through them. Total equipment cost **\$44,399.00**.
4. Requires an additional **email** charge and email must **reside** on their server. Total monthly cost for our existing accounts would be **\$95.00** with an additional **\$1.25** per mailbox per month.
5. Requires additional charge for web service and space over 30mb.
6. Labor costs **\$120.00** per hour.
7. Provides no **Internet filtering**.
8. One time startup cost of **\$18,886.95** and Monthly recurring telco costs of **\$19,188.24** to be part of the network plus additional charges for Internet. (**\$1,200** per month for 1/2 of a T1 and **\$300** per month for 56K which totals **\$9,600** for our district.)
9. Total Monthly Costs: **\$19,188.24** (telco cost) + **\$95** (email cost) + **\$9,600** (Internet costs) = **\$28,883.24** / 11 sites = **\$2,625.75** per month per school - less 80% discount = **\$ 525.15 per school per month**.

SEND TECHNOLOGIES

1. Will provide network **server support**.
2. Will provide remote operating system and network **software** support for desktop computers.
3. No additional equipment charges.
4. No additional charges for **email services**.
5. No additional charges for web **services**.
6. If on-site labor after installation is required, costs will be **\$60.00** per hour.
7. Will provide Web filtering **at no additional cost**.
8. Reprogramming and one time startup costs at no cost to the district with the exception of T1 one time installation costs of approximately **\$500**.
9. Total Monthly Costs: **\$3,158** (Bell telco costs) + **\$2350** (Internet costs) = **\$5,508** / 11 sites = **\$500.73** per school - less 80% discount = **\$100.15 per school per month**.



STATE OF LOUISIANA
DEPARTMENT OF STATE CIVIL SERVICE
LOUISIANA BOARD OF ETHICS
8401 UNITED PLAZA BOULEVARD
SUITE 200
BATON ROUGE, LA 70809-7017
(225) 922-1400
FAX: (225) 922-1414
1-800-842-8830
www.ethics.state.la.us

CONFIDENTIAL

Disclosure of any
information contained
herein or in connection
herewith is a criminal
misdemeanor pursuant to
LSA-R.S.42:1141E(12)-(13)

January 24, 2002

Torn Snell
P.O. Box 308
Farmerville, LA 71241

EXHIBIT 11

RE: Ethics Board Docket No. 2001-280

Dear Mr. Snell:

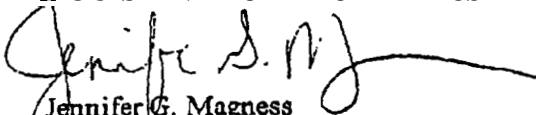
The Board of Ethics, at its January 16, 2002 meeting, considered an investigation report generated as a result of allegations that you worked for and owned in excess of 25% of a company, Send Technologies, which did business with the Union Parish School Board while you served as an employee of the Union Parish School Board. The investigation report revealed that you owned only 15% of Send Technologies and that you were not an employee of Send Technologies. Further, you did not participate in the initial contract between Send Technologies and the Union Parish School Board. However, there is an ongoing contract between Send Technologies and the Union Parish School Board while you serve as the Superintendent for the Union School Board.

Based upon the information obtained, the Board concluded and instructed me to inform you that no violation of the Code of Governmental Ethics was presented by your ownership interest in Send Technologies as you own less than 25%. However, as Superintendent you are deemed to participate in every contract involving the Union Parish School Board. Therefore, your service as Superintendent while Send Technologies has an ongoing contract with the school board presents an ongoing conflict pursuant to Section 1112B(2). Therefore, the Board instructed me to inform you that it would close the file in this provided the ongoing conflict is resolved by (1) the contract between Send Technologies and the Union Parish School Board being terminated immediately, or (2) by the Union Parish School Board submitting a disqualification plan pursuant to Section 1112C of the Code and Chapter 14 of the Rules for the Board of Ethics whereby the school board would make any and all decisions with respect to the ongoing contract and would oversee every aspect of the current contract. Please respond by February 24, 2002 as to what, if anything, will be done to resolve this conflict.

If you have any questions, please feel free to contact me.

Sincerely,

LOUISIANA BOARD OF ETHICS


Jennifer G. Magness
For the Board

EB:JGM

AN EQUAL OPPORTUNITY EMPLOYER



JOB DESCRIPTION

Technology Systems Administrator

TITLE: Technology Systems Administrator

QUALIFICATIONS: Valid Louisiana Teaching Certificate
Experience in development and management of technologies.

REPORTS TO: Superintendent

PERSONNEL EVALUATION RESPONSIBILITY: None

JOB GOALS: To make available to all students educational opportunities that will provide them with the technology skills to function successfully in life; to provide staff development.

Performance Responsibilities

1. Functions of the Technology Systems Administrator;
 - a. Provide leadership in the development and/or dissemination of materials in area of technology multimedia
 - b. Develop, implement and evaluate special multimedia program
 - c. Develop, implement and evaluate professional development programs..
 - d. Keep abreast of new trends
 - e. Makes recommendations promoting the improvement of multimedia program
 - f. Obtains outside consultants according to established policy

Technology Systems Coordinator
Page 2

- g. Coordinates with the principal site-based multimedia activities
- b. Provides assistance to principals in:
 - (1) Developing technology plan
 - (2) Maintaining and assessing effectiveness of technology plan
 - (3) Determining the best usage of technology materials and equipment
 - (4) Multimedia supervision
 - (5) Areas of special need

2. Critical Responsibilities

- a. Continues professional growth and development
- b. Adheres to standards of ethical behavior
- c. Adhere to local school board policies, procedures, and philosophy
- d. Assume management responsibilities and decisions in area of specialization
 - (1) Participating in personnel orientation
 - (2) Planning and implementing in-service training
 - (3) Preparing and administering technology dated budgets
 - (4) Making presentations to the school board when requested
 - (5) Maintaining accurate and timely records/reports
 - (6) Maintaining an effective system of distribution of equipment and materials to schools
 - (7) Participating in site-based facility planning for technology
 - (8) Planning & implementing technology programs and activities as mandated by the local school board, the State Department of Education, or other governing agencies, and
 - (9) Working with principals in implementing programs, services, and resolving technology problems

Technology Systems Administrator
Page 3

- e. **Communication and interpersonal relationship**
 - (1) **Interpreting** technology programs to the community
 - (2) **Addressing** concerns in area of responsibility
 - (3) **Preparing and disseminating** communications regarding technology plan
- f. **Personal qualities**
 - (1) Reveals a positive attitude and sets appropriate models as evidenced by:
 - (a) **Appearance**
 - (b) **Relationships**
 - (c) **Use of standard English**
 - (2) **Demonstrates** competency in areas of responsibilities

3. **Other Requirements**

Adheres to the regulations, policies, and procedures established by the State Board of Elementary and Secondary Education, the State Department of Education, and the local School Board, and/or other official publications.

Evaluation: Performance will be evaluated in accordance with the provisions of the School Board's policy on evaluation of personnel.

May 20, 1997
Date

[Signature]
Employee's Signature

Attachment 13

471 App	FRN	Applicant Name	SPIN	Service Provider Legal Name	Status	Year	Service ID	Requested
10378	7225	UNION PARISH SCHOOL BOARD	143004824	BellSouth Telecommunications, Inc.	FUNDED	1998	TELCOMMSERVICES	\$23,954.78
10378	7226	UNION PARISH SCHOOL BOARD	143010002	Send Technology, LLC.	FUNDED	1998	INTERNETACCESS	\$17,131.50
11873	14026	UNION PARISH SCHOOL BOARD	143004824	BellSouth Telecommunications, Inc.	FUNDED	1998	TELCOMM SERVICES	\$1,845.00
11873	14034	UNION PARISH SCHOOL BOARD	143004824	BellSouth Telecommunications, Inc.	FUNDED	1998	TELCOMM SERVICES	\$1,384.60
11873	14039	UNION PARISH SCHOOL BOARD	143004824	BellSouth Telecommunications, Inc.	FUNDED	1998	TELCOMM SERVICES	51,064.00
11873	14042	UNION PARISH SCHOOL BOARD	143004824	BellSouth Telecommunications, Inc.	FUNDED	1998	TELCOMM SERVICES	\$2,792.00
11873	14053	UNION PARISH SCHOOL BOARD	143004824	BellSouth Telecommunications, Inc.	FUNDED	1998	TELCOMM SERVICES	\$1,409.60
11873	14062	UNION PARISH SCHOOL BOARD	143001583	Century Tel. of Central Louisiana	FUNDED	1998	TELCOMMSERVICES	\$1,277.50
11873	14067	UNION PARISH SCHOOL BOARD	143001583	Century Tel. of Central Louisiana	FUNDED	1998	TELCOMMSERVICES	52,250.00
11873	14070	UNION PARISH SCHOOL BOARD	143001583	Century Tel. of Central Louisiana	FUNDED	1998	TELCOMM SERVICES	\$553.00
11873	14074	UNION PARISH SCHOOL BOARD	143004824	BellSouth Telecommunications, Inc.	FUNDED	1998	TELCOMM SERVICES	\$1,521.00
11873	14079	UNION PARISH SCHOOL BOARD	143004824	BellSouth Telecommunications, Inc.	FUNDED	1998	TELCOMM SERVICES	\$1,812.60
16738	13956	UNION PARISH SCHOOL BOARD	143005933	Anixter, Inc. - 148	FUNDED	1998	INTERNAL CONNECTIONS	1329.67
16738	13960	UNION PARISH SCHOOL BOARD	143005933	Anixter, Inc. - 148	FUNDED	1998	INTERNAL CONNECTIONS	\$1,959.30
16738	13963	UNION PARISH SCHOOL BOARD	143005933	Anixter, Inc. - 146	FUNDED	1998	INTERNAL CONNECTIONS	\$697.90
16738	13967	UNION PARISH SCHOOL BOARD	143005933	Anixter, Inc. - 146	FUNDED	1998	INTERNAL CONNECTIONS	\$325.60
16738	13970	UNION PARISH SCHOOL BOARD	143005933	Anixter, Inc. - 146	FUNDED	1998	INTERNAL CONNECTIONS	\$1,269.60
16738	13974	UNION PARISH SCHOOL BOARD	143005933	Anixter, Inc. - 146	FUNDED	1998	INTERNAL CONNECTIONS	\$1,269.60
16738	13980	UNION PARISH SCHOOL BOARD	143005933	Anixter, Inc. - 146	FUNDED	1998	INTERNAL CONNECTIONS	\$697.90
16738	13982	UNION PARISH SCHOOL BOARD	143005933	Anixter, Inc. - 146	FUNDED	1998	INTERNAL CONNECTIONS	\$897.30
16738	13986	UNION PARISH SCHOOL BOARD	143005933	Anixter, Inc. - 148	FUNDED	1998	INTERNAL CONNECTIONS	\$366.30
16738	13988	UNION PARISH SCHOOL BOARD	143005933	Anixter, Inc. - 146	FUNDED	1998	INTERNAL CONNECTIONS	\$897.30
16738	13991	UNION PARISH SCHOOL BOARD	143005933	Anixter, Inc. - 146	FUNDED	1998	INTERNAL CONNECTIONS	\$284.90
16956	14254	UNION PARISH SCHOOL BOARD	143011425	DiversiFIRE, Inc.	FUNDED	1998		
16956	14255	UNION PARISH SCHOOL BOARD	143011425	DiversiFIRE, Inc.	FUNDED	1998		
16956	14256	UNION PARISH SCHOOL BOARD	143011425	DiversiFIRE, Inc.	FUNDED	1998		
16956	14257	UNION PARISH SCHOOL BOARD	143011425	DiversiFIRE, Inc.	FUNDED	1998		
16956	14258	UNION PARISH SCHOOL BOARD	143011425	DiversiFIRE, Inc.	FUNDED	1998		
16956	14259	UNION PARISH SCHOOL BOARD	143011425	DiversiFIRE, Inc.	FUNDED	1998		
16956	14260	UNION PARISH SCHOOL BOARD	143011425	DiversiFIRE, Inc.	FUNDED	1998		
16956	14261	UNION PARISH SCHOOL BOARD	143011425	DiversiFIRE, Inc.	FUNDED	1998		
16956	14262	UNION PARISH SCHOOL BOARD	143011425	DiversiFIRE, Inc.	FUNDED	1998		
17134	14446	UNION PARISH SCHOOL BOARD	143007389	Global Data Systems	FUNDED	1998	INTERNAL CONNECTIONS	\$6,682.50
17134	14455	UNION PARISH SCHOOL BOARD	143007389	Global Data Systems	FUNDED	1998	INTERNAL CONNECTIONS	14,025.70
17134	14462	UNION PARISH SCHOOL BOARD	143007389	Global Data Systems	FUNDED	1998	INTERNAL CONNECTIONS	51,725.80
17134	14472	UNION PARISH SCHOOL BOARD	143007389	Global Data Systems, Inc.	FUNDED	1998	INTERNAL CONNECTIONS	\$5,940.00
17134	14476	UNION PARISH SCHOOL BOARD	143007389	Global Data Systems, Inc.	FUNDED	1998	INTERNAL CONNECTIONS	\$5,940.00
17	14483	UNION PARISH SCHOOL BOARD	143007389	Global Data Systems	FUNDED	1998	INTERNAL CONNECTIONS	\$2,767.80
17134	14489	UNION PARISH SCHOOL BOARD	143007389	Global Data Systems	FUNDED	1998	INTERNAL CONNECTIONS	\$3,558.60
1	14491	UNION PARISH SCHOOL BOARD	143007389	Global Data Systems	FUNDED	1998	INTERNAL CONNECTIONS	\$3,558.60
1	14496	UNION PARISH SCHOOL BOARD	143007389	Global Data Systems	FUNDED	1998	INTERNAL CONNECTIONS	\$6,682.50
17134	14498	UNION PARISH SCHOOL BOARD	143007389	Global Data Systems	FUNDED	1998	INTERNAL CONNECTIONS	\$1,509.90

EXHIBIT 13

Attachment 13

471 App	FRN	Applicant Name	SPIN	Service Provider Legal Name	Status	Year	Service ID	Requested
209497	483189	UNION PARISH SCHOOL BOARD	143004824	BellSouth Telecommunications, Inc.	FUNDED	1999	TELCOMM SERVICES	\$3,772.00
209497	483190	UNION PARISH SCHOOL BOARD	143010002	Send Technology, LLC.	FUNDED	1999	INTERNAL CONNECTIONS	\$10,002.36
121348	174311	UNION PARISH SCHOOL BOARD	143004824	BellSouth Telecommunications, Inc.	FUNDED	1999		
121741	175066	UNION PARISH SCHOOL BOARD	143010002	Send Technology, LLC.	FUNDED	1999	INTERNAL CONNECTIONS	\$127,920.00
121741	176108	UNION PARISH SCHOOL BOARD	143007389	Global Data Systems, Inc.	FUNDED	1999	INTERNAL CONNECTIONS	\$16,268.80
121741	176115	UNION PARISH SCHOOL BOARD	143007389	Global Data Systems, Inc.	FUNDED	1999	INTERNAL CONNECTIONS	\$4,311.90
121741	176121	UNION PARISH SCHOOL BOARD	143007389	Global Data Systems, Inc.	FUNDED	1999	INTERNAL CONNECTIONS	\$4,311.90
121741	176128	UNION PARISH SCHOOL BOARD	143007389	Global Data Systems, Inc.	FUNDED	1999	INTERNAL CONNECTIONS	\$3,558.60
121741	178132	UNION PARISH SCHOOL BOARD	143007389	Global Data Systems, Inc.	FUNDED	1999	INTERNAL CONNECTIONS	\$3,558.60
121741	176141	UNION PARISH SCHOOL BOARD	143007389	Global Data Systems, Inc.	FUNDED	1999	INTERNAL CONNECTIONS	\$4,100.00
121741	176227	UNION PARISH SCHOOL BOARD	143004691	Anixter Inc.	FUNDED	1999	INTERNAL CONNECTIONS	\$13,413.58
121741	176237	UNION PARISH SCHOOL BOARD	143011425	DiversiFIRE, Inc.	FUNDED	1999	INTERNAL CONNECTIONS	\$6,560.00
122211	176017	UNION PARISH SCHOOL BOARD	143004824	BellSouth Telecommunications, Inc.	FUNDED	1999	TELCOMM SERVICES	\$46,454.64
122211	184282	UNION PARISH SCHOOL BOARD	143001583	CenturyTel of Central Louisiana, Inc.	FUNDED	1999	TELCOMM SERVICES	\$9,548.08
122211	184291	UNION PARISH SCHOOL BOARD	143001192	AT&T Corp.	FUNDED	1999	TELCOMM SERVICES	\$41,328.00
119672	171014	UNION PARISH SCHOOL BOARD	143004824	BellSouth Telecommunications, Inc.	FUNDED	1999		
118672	171021	UNION PARISH SCHOOL BOARD	143010002	Send Technology, LLC.	FUNDED	1999	INTERNET ACCESS	\$23,124.00
125780	184809	UNION PARISH SCHOOL BOARD	143004400	McKee Electronics, Inc. D/B/A Executo	FUNDED	1999	INTERNAL CONNECTIONS	\$13,021.60
125780	184824	UNION PARISH SCHOOL BOARD	143004408	McKee Electronics, Inc. D/B/A Executo	FUNDED	1999	INTERNAL CONNECTIONS	\$13,398.30
125780	184829	UNION PARISH SCHOOL BOARD	143004408	McKee Electronics, Inc. D/B/A Executo	FUNDED	1999	INTERNAL CONNECTIONS	\$13,398.30
125780	184831	UNION PARISH SCHOOL BOARD	143004408	McKee Electronics, Inc. D/B/A Executo	FUNDED	1999	INTERNAL CONNECTIONS	\$10,420.90
125780	184833	UNION PARISH SCHOOL BOARD	143004408	McKee Electronics, Inc. D/B/A Executo	FUNDED	1999	INTERNAL CONNECTIONS	\$11,909.60
725780	184835	UNION PARISH SCHOOL BOARD	143004408	McKee Electronics, Inc. D/B/A Executo	FUNDED	1999	INTERNAL CONNECTIONS	\$11,909.60
125780	184837	UNION PARISH SCHOOL BOARD	143004408	McKee Electronics, Inc. D/B/A Executo	FUNDED	1999	INTERNAL CONNECTIONS	\$11,909.60
125780	184842	UNION PARISH SCHOOL BOARD	143004400	McKee Electronics, Inc. D/B/A Executo	FUNDED	1999	INTERNAL CONNECTIONS	\$10,420.90
125780	184846	UNION PARISH SCHOOL BOARD	143004408	McKee Electronics, Inc. D/B/A Executo	FUNDED	1999	INTERNAL CONNECTIONS	\$13,398.30
125780	184851	UNION PARISH SCHOOL BOARD	143004408	McKee Electronics, Inc. D/B/A Executo	FUNDED	1999	INTERNAL CONNECTIONS	\$13,398.30
125780	184856	UNION PARISH SCHOOL BOARD	143004408	McKee Electronics, Inc. D/B/A Executo	FUNDED	1999	INTERNAL CONNECTIONS	\$11,909.60

Attachment 13

471 App	FRN	Applicant Name	SPIN	Service Provider Legal Name	Status	Year	Service ID	Requested
160965	405626	UNION PARISH SCHOOL BOARD	143006913	CenturyTel Wireless, Inc. f/k/a Century	FUNDED	2000	TELCOMM SERVICES	\$1,806.00
160965	405655	UNION PARISH SCHOOL BOARD	143020987	Key Tech Communication Services, L.L.C.	FUNDED	2000	TELCOMM SERVICES	\$1,281.00
160965	385749	UNION PARISH SCHOOL BOARD	143004824	BellSouth Telecommunications, Inc.	FUNDED	2000	TELCOMM SERVICES	\$121,416.12
160965	385761	UNION PARISH SCHOOL BOARD	143001192	AT&T Corp.	FUNDED	2000	TELCOMM SERVICES	\$27,216.00
160965	385823	UNION PARISH SCHOOL BOARD	143010002	Send Technology, L.L.C.	FUNDED	2000	INTERNET ACCESS	\$63,000.00
163210	405241	UNION PARISH SCHOOL BOARD	143010002	Send Technology, L.L.C.	FUNDED	2000	INTERNAL CONNECTIONS	\$80,900.40
163210	405275	UNION PARISH SCHOOL BOARD	143004340	Dell Marketing LP	FUNDED	2000	INTERNAL CONNECTIONS	\$7,912.80
163210	405449	UNION PARISH SCHOOL BOARD	143004691	Anixter Inc.	FUNDED	2000	INTERNAL CONNECTIONS	\$50,547.00

Attachment 13

471 App	FRN	Applicant Name	SPIN	Service Provider Legal Name	Status	Year	Service ID	Requested
229706	618168	UNION PARISH SCHOOL BOARD	143001583	CenturyTel of Central Louisiana, Inc.	FUNDED	2001	TELCOMM SERVICES	\$21,093.00
229706	594001	UNION PARISH SCHOOL BOARD	143004824	BellSouth Telecommunications, Inc.	FUNDED	2001	TELCOMM SERVICES	\$107,710.97
229706	594023	UNION PARISH SCHOOL BOARD	143001192	AT&T Corp.	FUNDED	2001	TELCOMM SERVICES	\$25,598.00
228706	594052	UNION PARISH SCHOOL BOARD	143010002	Send Technology, L.L.C.	FUNDED	2001	INTERNET ACCESS	\$59,250.00
229706	594092	UNION PARISH SCHOOL BOARD	143006913	CenturyTel Wireless, Inc.	FUNDED	2001	TELCOMM SERVICES	\$7,465.50
229706	594323	UNION PARISH SCHOOL BOARD	143020645	Metrocall Inc.	FUNDED	2001	TELCOMM SERVICES	\$1,204.75
229718	592818	UNION PARISH SCHOOL BOARD	143010002	Send Technology, L.L.C.		2001	INTERNAL CONNECTIONS	\$78,861.15
229718	594487	UNION PARISH SCHOOL BOARD	143004340	Dell Marketing LP		2001	INTERNAL CONNECTIONS	\$20,453.70
229718	646585	UNION PARISH SCHOOL BOARD	143022826	Vantage Systems Design, Inc.		2001	INTERNAL CONNECTIONS	\$13,050.00
229718	638672	UNION PARISH SCHOOL BOARD	143004691	Anixter Inc.		2001	INTERNAL CONNECTIONS	\$48,250.20
229718	638959	UNION PARISH SCHOOL BOARD	143004408	McKee Electronics, Inc. D/B/A Executive of MS		2001	INTERNAL CONNECTIONS	\$20,822.82

Attachment 13

471 App	FRN	Applicant Name	SPIN	Service Provider Legal Name	Status	Year	Service ID	Requested
289546	829239	UNION PARISH SCHOOL BOARD	143005588	CDW Computer Centers, Inc.		2002	INTERNAL CONNECTIONS	517,798.22
289546	799289	UNION PARISH SCHOOL BOARD	143020645	Metrocall Inc.	FUNDED	2002	TELCOMM SERVICES	\$1,426.80
289546	799400	UNION PARISH SCHOOL BOARD	143004340	Dell Marketing LP	FUNDED	2002	INTERNAL CONNECTIONS	\$4,802.40
289546	799495	UNION PARISH SCHOOL BOARD	143004340	Dell Marketing LP	FUNDED	2002	INTERNAL CONNECTIONS	\$4,802.40
289546	799568	UNION PARISH SCHOOL BOARD	143004340	Dell Marketing LP	FUNDED	2002	INTERNAL CONNECTIONS	\$4,802.40
289546	799596	UNION PARISH SCHOOL BOARD	143004340	Dell Marketing LP	FUNDED	2002	INTERNAL CONNECTIONS	\$4,802.40
289546	799630	UNION PARISH SCHOOL BOARD	143004340	Dell Marketing LP	FUNDED	2002	INTERNAL CONNECTIONS	\$4,802.40
289546	799649	UNION PARISH SCHOOL BOARD	143004340	Dell Marketing LP		2002	INTERNAL CONNECTIONS	\$4,268.80
289546	799676	UNION PARISH SCHOOL BOARD	143005890	Comark, Inc.	FUNDED	2002	INTERNAL CONNECTIONS	\$6,072.43
289546	799688	UNION PARISH SCHOOL BOARD	143005890	Comark, Inc.	FUNDED	2002	INTERNAL CONNECTIONS	\$5,327.30
289546	799700	UNION PARISH SCHOOL BOARD	143005890	Comark, Inc.		2002	INTERNAL CONNECTIONS	\$1,816.88
289546	799721	UNION PARISH SCHOOL BOARD	143005890	Comark, Inc.	FUNDED	2002	INTERNAL CONNECTIONS	\$7,152.52
289546	799742	UNION PARISH SCHOOL BOARD	143005890	Comark, Inc.	FUNDED	2002	INTERNAL CONNECTIONS	\$5,610.80
289546	799752	UNION PARISH SCHOOL BOARD	143005890	Comark, Inc.	FUNDED	2002	INTERNAL CONNECTIONS	\$3,963.71
289546	799766	UNION PARISH SCHOOL BOARD	143005890	Comark, Inc.		2002	INTERNAL CONNECTIONS	\$1,816.88
289546	799845	UNION PARISH SCHOOL BOARD	143004691	Anixter Inc.	FUNDED	2002	INTERNAL CONNECTIONS	\$850.50
289546	799860	UNION PARISH SCHOOL BOARD	143004891	Anixter Inc.	FUNDED	2002	INTERNAL CONNECTIONS	\$5,341.50
289546	799877	UNION PARISH SCHOOL BOARD	143004691	Anixter Inc.	FUNDED	2002	INTERNAL CONNECTIONS	\$850.50
289546	799884	UNION PARISH SCHOOL BOARD	143004691	Anixter Inc.	FUNDED	2002	INTERNAL CONNECTIONS	\$850.50
289546	793966	UNION PARISH SCHOOL BOARD	143004824	BellSouth Telecommunications, Inc.	FUNDED	2002	TELCOMM SERVICES	\$123,609.26
289546	793973	UNION PARISH SCHOOL BOARD	143001192	AT&T Corp.	FUNDED	2002	TELCOMM SERVICES	\$26,568.00
289546	794080	UNION PARISH SCHOOL BOARD	143008900	ALLTEL Communications, Inc.	FUNDED	2002	TELCOMM SERVICES	\$10,184.40
289546	794101	UNION PARISH SCHOOL BOARD	143001583	CenturyTel of Central Louisiana, Inc.	FUNDED	2002	TELCOMM SERVICES	\$26,568.00
289546	794146	UNION PARISH SCHOOL BOARD	143004691	Anixter Inc.	FUNDED	2002	INTERNAL CONNECTIONS	\$5,341.50
289546	794189	UNION PARISH SCHOOL BOARD	143004340	Dell Marketing LP		2002	INTERNAL CONNECTIONS	\$19,444.68

LAW OFFICES
RANKIN, YELDELL & KATZ
A PROFESSIONAL LAW CORPORATION
411 SOUTH WASHINGTON
BASTROP, LOUISIANA 71220

JAMES E. YELDELL

ALEX W. RANKIN

STEPHEN J. KATZ

SCOTTY W. LOWERY

TELEPHONE
BASTROP
318-281-4913

FAX
318-281-9819

March 28, 2003

EXHIBIT 14

Letter of Appeal
Schools and Libraries Division
Box 125 • Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

Dear Sir:

Our firm serves as general counsel to the Union Parish School Board.

I have reviewed the Letter of Appeal from Send Technologies, LLC to you in regard to its appeal and have consented to this correspondence serving as an attachment thereto or to be forwarded therewith.

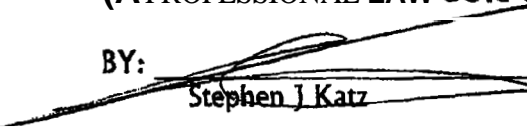
On behalf of the Union Parish School Board we can affirm that the facts set forth in the Letter of Appeal as they pertain to the Union Parish School Board are correct. The undersigned prepared the correspondence dated May 19, 1998 to Mike Lazenby, Superintendent of the Union Parish School Board attached as an exhibit and reviewed the May 11, 1998 memorandum from the business manager, Donna Cranford, to the members of the finance committee of the Union Parish School Board. I also received and reviewed the letters of May 22, 2001; January 24, 2002 and February 19, 2002 from the Louisiana Board of Ethics and provided information requested by it. I am also familiar with the minutes of the meeting of the Union Parish School Board on February 10, 2003 and the report made by its independent auditor set forth in those minutes.

Should you desire any additional information from the Union Parish School Board or from me, please feel free to contact me.

Sincerely,

RANKIN, YELDELL & KATZ
(A PROFESSIONAL LAW CORPORATION)

BY:


Stephen J. Katz

SJK/mt

I:\MYRA\KATZ\UPSB\GENERAL\Appeal.ltr.wpd

C

C

**Federal Communications Commission**

The FCC Acknowledges Receipt of Comments From ...
Send Technologies LLC
...and Thank You for Your Comments

Your Confirmation Number is: **'20031216789746'**

Date Received: **Dec 16 2003**

Docket: **02-6**

Number of Files Transmitted: 3

DISCLOSURE

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updated 02/11/02

funding to Union Parish in excess of \$167,000.00.⁴ Given that the Consolidated Appeal and December Appeal (“Appeals”) pertain to the same parties, underlying facts and history, and legal and policy arguments, all information and arguments set forth in the December Appeal are hereby incorporated into this Consolidated Appeal. A copy of the December Appeal is attached as Exhibit B.⁵ Send also believes it is most appropriate for the Commission to consider the Appeals together, on the same time-line as the December Appeal. If consideration of the December Appeal would be delayed by combining it with this Consolidated Appeal, Send requests that they remain bifurcated.

As discussed in the December Appeal, and as highlighted herein, the Commission should overturn USAC’s decisions with respect to Union Parish, and direct it to withdraw the CALs because: (1) there was no prohibited conflict of interest under applicable law that compromised Union Parish’s competitive bidding process; (2) Union Parish complied with the letter and spirit of all applicable competitive bidding rules and the intent underlying such rules; (3) later-adopted Commission precedent regarding the competitive bidding rules, including the *MasterMind* cases, is inapplicable to Union Parish’s granted applications and involves easily distinguishable facts; (4) the SLD and USAC exceeded their authority when they interpreted current Commission precedent regarding the competitive bidding rules and retroactively applied such interpretations to Union Parish’s E-rate applications; and (5) USAC exceeded its authority when it justified its actions in the Union Parish case by relying on Part 48 regulations that are wholly inapplicable to the E-rate Program. If the Commission determines that it cannot overturn USAC’s decisions based upon the foregoing, then the competitive bidding rules should be waived in this case. The harm resulting

⁴ Filing information regarding the three CALs at issue in the December Appeal is as follows: (1) Funding Year: 1999-2000, Form 471 Application Number: 119672, Billed Entity Number: 139313, FRN: 171021, rescission of \$23,124.00; (2) Funding Year: 2000-2001, Form 471 Application Number: 160965, Billed Entity Number: 139313, FRN: 385823, rescission of \$63,000.00; and (3) Funding Year: 2000-2001, Form 471 Application Number: 163210, Billed Entity Number: 139313, FRN: 405241, rescission of \$80,900.40.

⁵ Consolidated Request for Review by Send Technologies, LLC of Decisions of Universal Service Administrator Regarding Union Parish School Board, CC Docket No; 02-6 (filed Dec. 16, 2003) (“December Appeal”).



from rescinding the monies allocated to Union Parish and Send far outweigh **any** purported benefit **in** denying the waiver.

I. BACKGROUND?

As explained in greater detail in the December Appeal, Union **Parish** filed multiple applications in 1999 and 2000 for funding for Internet access and internal connections and **related** installation and technical support offered through the E-rate Program for funding years 1999-2001. The Technology Systems Administrator for Union **Parish**, **Tom** Snell, was listed as the contact person on Union Parish's Form 470 applications. Snell holds a fifteen percent minority, non-controlling unitholder interest in Send. Snell is not now, nor has he ever been, **an** employee of Send, and Snell has never undertaken any operational responsibility for Send. Snell is a passive investor. Snell's ownership interest in Send is not attributable under applicable Louisiana state and local law. Immediately upon learning that Send had responded to Union Parish's Form **470** applications with competitive bids, Snell informed the Superintendent of Union **Parish**, who sought and received a specific determination that Snell's unitholder interest would not pose **a** conflict of interest under Louisiana state law if Send were awarded E-rate contracts. Notwithstanding the finding that Snell did not have a conflict of interest, he was nevertheless insulated from the Union Parish competitive bidding process, and subsequent decision making involving Send, **in** order to ensure a full and fair competitive bidding process, both in reality and perception. It was impossible for Union Parish to **know** when it filed its initial Form 470 that listing Snell, its own Technology **Systems** Administrator, as the contact person, would later raise a theoretical question about the fairness of its competitive bidding because Send would later bid **for** Union Parish's services.

The FCC's and the SLD's competitive bidding rules have never addressed such conflicts of interest, but they do require compliance with local and state competitive bidding and procurement laws – which **Union** Parish observed. Union Parish received **a** determination from the State of

⁶ See pages 1-13 of the December Appeal **for a full** recitation of the facts and history concerning **this** case. **Also** attached hereto are declarations of **Tom** Snell, Donna Cranford **and** Mark **Stevenson**, **all of whom** have personal **knowledge of the** facts **set** forth herein.

Louisiana that Snell's unitholder interest in Send did not pose a conflict of interest. This is significant since the FCC's rules specifically provide that the federal law is not intended to preempt the ~~state~~ law on such matters. At the time it submitted its ~~Form~~ 470s, Union Parish complied with all **known** federal, state and local competitive bidding rules with respect to the E-rate Program.

~~On January 31, 2003~~, two to three years after Union Parish's five applications were granted and funded, and after it received valuable Internet access services and ~~internal~~ connections from Send, ~~the SLD~~ issued **CALs** seeking to void the granted applications and rescind the funding already allocated pursuant to the applications, Send filed with **USAC** a consolidated appeal addressing all five **CALs** on April 1, 2003, three of which were denied on October **17, 2003**, and two of which were denied four ~~months~~ later on **January 20, 2004**. The stated basis **for** all ~~of~~ the SLD's and USAC's arguments emanated from Commission precedent regarding competitive bidding that was adopted in the *MasterMind* line of cases years after ~~the~~ Union ~~Parish~~ applications were granted. Based **on** this precedent, which is easily distinguished from the facts in this case, the SLD asserted that Union Parish's **Form 470s** contained "service provider contact information" and violated the intent of the competitive bidding process. Union Parish's **Form 470s** do **not** contain "service provider contact information," but they were nevertheless declared invalid and all **funding** related thereto **was** rescinded.

II. THE PUBLIC INTEREST REQUIRES THAT THE FCC OVERTURN THE CALS, OR IN THE ALTERNATIVE, GRANT UNION PARISH AND SEND A WAIVER.

Without repeating the detailed arguments contained in the December Appeal, all **of** which favor the Commission overturning USAC's decisions, this Consolidated Appeal simply highlights important points raised for the Commission's consideration in the Union Parish case.

A. There Was No Prohibited Conflict of Interest in the Union Parish Case Under Any Applicable Law.'

USAC alleges that Snell's minority interest in Send **is** a conflict **of** interest under E-rate Program rules. However, no prohibited conflict of interest was created by identifying Snell as the

⁷ See December Appeal at 13-15.



Union Parish contact in the Form **470s** at issue here. The **FCC's** rules addressing E-rate competitive bidding practices have never, **and** do not today, address or define conflicts of interest in general, or **how** conflicts may arise by virtue of associations or affiliations between a service provider and an E-rate applicant. More specifically, no **FCC** or Program rules address whether minority, non-controlling unitholder interests held by a school or library employee in a service provider under contract to the school or library may be considered a conflict of interest. The **FCC's** rules **only** provide that applicants must seek competitive bids and comply with state and local procurement regulations. The **FCC's** competitive bidding rules do not preempt state or local **rules**.

In Union Parish's case, the state of Louisiana found that there **was** no prohibited association between Snell and Send. The state **and** local competitive bidding requirements for **Louisiana**, including Louisiana's conflict of interest rules, to which **Union Parish was** bound under **both FCC** regulation **and** state law, provide that a conflict of interest would be found if a public servant like Snell owned or controlled in excess **of 25%** of a company with whom the public servant's agency did business. Snell holds a 15% interest in Send which is not attributable under Louisiana law.

The SLD's **rules** also did not address "prohibited associations" or conflicts of interest that **could** compromise the competitive bidding process until September 2002, years after the Union Parish applications were granted and funded, when the SLD posted **an** announcement **on its** website with the holding **of MasterMind** case. In the absence of **FCC** rules addressing conflict of interest issues in these circumstances, and the FCC's conclusion that its competitive bidding rules do not preempt state and local rules, the Commission **must** find that Snell did not have notice that **his** minority ownership interest in Send could raise a prohibited conflict of interest.

B. Union Parish Undertook a Competitive Bidding Process that Complied with All Applicable Laws.*

The intent of the E-rate Program competitive bidding process, to ensure that Union Parish would obtain the most cost-effective services available, **was** not violated simply because Snell was listed as the contact person for Union Parish. The bright line analysis applied by the SLD and

^a See December Appeal at 8-12, 15-21.

USAC ignores the facts of this particular case. What is germane is that Union Parish undertook, in **good** faith, a full and fair Competitive bidding process and received Internet services at less than half the cost of services offered by Send's competitors, Union Parish also received **internal** connections at rates that were a fraction of the costs offered by other competitors. By obtaining **services** at **the** lowest costs possible, Union **Parish** lessened its own demands on universal service funds and increased funds available to other applicants. Thus, the process Union Parish went through to choose Send explicitly met the public **policy** objectives that underlay the competitive bidding rules.

C. USAC Exceeded its Authority in Applying the Rationale from the *Mastermind* Case to the Union Parish Case.⁹

USAC exceeded its authority when it applied a broader interpretation of the *Mastermind* line of cases to Union Parish's and Send's case. The facts in those cases can be easily distinguished from **the** Union **Parish** case. First, in each of the *MasterMind* cases the **SLD** and the Commission ruled on pending applications and funding requests **and** denied such applications *prospectively*. In Union Parish's case, however, the SLD seeks to undo previously granted applications **and** rescind funding for services **already** rendered based upon later-adopted Commission precedent.

Second, unlike the *MasterMind* cases, the **SLD** and USAC have not asserted in Union **Parish's** case that the competitive bidding process undertaken by Union Parish did not comply with the Commission's rules and state **and** local competitive bidding requirements. USAC's focuses solely on the name of the authorized contact person listed on the Form **470**, concluding that because Snell **was** listed on the Form 470, Union Parish could not have undertaken a **fair** competitive bidding process. The facts in this case do not support such a conclusion. USAC values form over substance when it suggests that Union Parish's competitive bidding process would have been valid if only it had listed someone else as the contact person. Even if another person had been listed on Union Parish's application, it would not have impacted what was already a full and fair competitive bidding process undertaken by Union Parish in good faith,

⁹ See December **Appeal** at 21-31.

Moreover, in the *MasterMind* line of cases, the conflict of interest presented is obvious because in each case the schools delegated their responsibility to undertake competitive bidding to service providers. That is not the case for Union Parish. The holdings in the various *MasterMind* cases cannot be used as a blunt instrument, or a bright line test, without regard to the individual facts of a case – especially a case like Union Parish’s. To do so misses the essential point – the spirit and letter of the competitive bidding rules was observed and the public interest was served by the bidding process undertaken by Union Parish.

D. USAC Exceeded its Authority in Retroactively Imposing its Own Expanded Interpretation of the *Mastermind* Cases to Union Parish’s Granted and Funded Applications.”

USAC does not have the authority to make policy, interpret any unclear rule promulgated by the Commission, or create the equivalent of new guidelines. Although the Commission discussed whether an “association” with a service provider may run afoul of the competitive bidding requirements in the later-decided *Mastermind*-type cases, USAC’s interpretation of the FCC’s precedent, that an applicant’s contact person cannot be associated with a service provider (even when the contact person is an employee of the applicant), goes beyond the FCC’s interpretation and seems specifically tailored to cast doubt on the Union Parish applications. The “association” the FCC prohibited in the *MasterMind* cases was an exclusive association with a service provider, not a situation in which an applicant’s employee had a minority unitholder interest in a service provider. Thus, it was inappropriate for USAC to adopt and apply to Union Parish’s case an interpretation of FCC case law that is broader than what the Commission actually held in those cases.

Even assuming, arguendo, that USAC interpreted Commission precedent correctly, USAC exceeded its authority by retroactively applying such precedent in this case. It is a basic tenet of American jurisprudence that if a court overturns its prior precedent in a line of cases, the new precedent is applied prospectively. The *Mastermind* cases which discuss prohibited associations were released after all five of Union Parish’s Form 470s were granted and funded.

¹⁰ See December Appeal at 21-30.

Both courts and the Commission have long recognized that **new** policies and decisions cannot **be** applied retroactively to cases already concluded, especially where parties detrimentally relied on the previous policy. Specifically, Union Parish detrimentally relied on the fact that the SLD granted and funded its Form 470 applications year after year. Had the SLD made Union Parish first aware that listing Snell **as** a contact person may trigger a rule violation in **the** case of its applications for the 1999-2000 funding year, it could have taken corrective action for subsequent years. Union Parish had no reason to believe that the SLD would years later declare Union Parish's **funded** application invalid because of **an** alleged competitive bidding violation claim based upon later-adopted and inapplicable case **law**.

In other FCC decisions regarding the E-rate Program, including *Prairie City School District*, *Williamsburg-James City*, *Ysleta* and *Winston-Salem* (all of which are discussed on pages 26-30 of the December Appeal) the Commission held that where **an** application **was submitted** before **the** establishment of a particular and applicable rule, the applicants could not have been aware **of** the application requirements. Clarifications of universal service policies are to be applied only prospectively by the SLD.

The Commission should conclude in Union Parish's case that **the SLD** cannot retroactively **apply** USAC's current interpretations of prohibited associations to Union Parish's case, **if any** such interpretations can even **be** found to apply. The Commission has never determined that such passive unitholder interest creates an improper association between **an** applicant and service provider. Furthermore, Union Parish's funding requests were approved and monies were allocated well before the Commission announced in *Carethers* that certain associations between applicants and service providers could violate the E-rate Program's competitive bidding rules. Union Parish and Send (and possibly other E-rate participants) relied on the competitive bidding rules, **and** interpretations thereof, that were current when the applications were filed and reasonably interpreted them to support the conclusion that the type of association presented in Union Parish and Send's case was permissible – especially since state and local procurement guidelines also were observed and no conflict of interest was found to exist by the state of Louisiana. Allowing USAC's

decision to stand in the Union Parish case would mean that the SLD and USAC can retroactively **deny** previously granted applications based upon rules and precedent adopted after applications are **approved**. Serious questions would be raised about whether E-rate participants can ever **rely** upon actions taken by the **SLD**.

E. USAC Exceeded its Authority in Applying Part 48 Federal Acquisition Planning Rules to Union Parish's Case."

As previously stated, **USAC** is not empowered to make policy, interpret any unclear rule promulgated by the Commission or to create **the** equivalent of new guidelines. In its **denial** of the previously filed appeals, **USAC** exceeds its authority by applying the federal procurement rules and creating the equivalent of new guidelines for the E-rate Program. Instead of applying FCC or **Support** Mechanism rules for the relevant time periods to **Union Parish's** case, **USAC** disregards the rights of **Union Parish and Send** and applies **Part 48 of** the Code of Federal Regulations, which the Commission **has** specifically stated is "inapplicable" to the E-rate **Program**.

F. If Necessary, Waiver of the Competitive Bidding Rules is Appropriate in Union Parish's Case.¹²

If the Commission determines that listing Snell **as** a contact person on Union Parish's Form **470s** violated the letter **and** the spirit of the competitive bidding rules, it would be **in** the public interest to grant **Union Parish** a waiver **of** the competitive bidding rules in this case. There **was** no **way Union Parish** could have **known** when it filed its Form 470 that listing Snell, its **own** employee, would create a potential competitive bidding issue solely because **Send** would later choose to bid on Union Parish's services. Neither the Commission nor the SLD has ever explained that listing **an** applicant's employee, who has a minority **and** silent ownership interest in a service provider, as a contact person on a Form 470 is a competitive bidding violation. **In** fact, Union Parish followed and complied with all applicable federal, state **and** local competitive bidding **and** conflict of interest regulations, and received a favorable ruling from the state on the conflict of interest issue.

¹¹ See December Appeal at 31-32.

¹² See December Appeal at 32-37.

In addition, Union Parish continued to submit Form **470s** with Snell listed as the contact person for the school system because the **SLD** continued to approve Union **Parish's** funding requests. In good faith, Union **Parish** relied on the **SLD's** prior approvals of its **Form 470s** and would not have submitted additional funding requests had it thought **or known** that listing Snell as its contact person violated the intent of the E-rate Program's competitive bidding process. In reliance on the granted **and** funded applications, valuable services were rendered **and paid for**. **As in Ysleta**, the Commission should therefore consider Union Parish's reliance on the rules and interpretations regarding competitive bidding **and** conflicts of interest that **were** available, **and** the **SLD's** grant of Union Parish's applications, and grant this waiver request. Denying a waiver in this case would result in irreparable harm to Send, Union Parish and, most **importantly**, the students and faculty of Union Parish who would be required to find funding in already constrained school budgets to retroactively pay Send for services rendered years ago, . .

III. CONCLUSION.

For the reasons set forth herein and in the December Appeal, Send requests that the Commission reverse USAC's decision denying Send's appeal of the CALs and direct the **SLD** to withdraw the **CALs** issued to Send **and** Union Parish. If, however, the Commission does not overturn USAC's decision, Send requests a waiver **of** the FCC's and SLD's competitive bidding rules.

Respectfully submitted,

/s/ Jennifer L. Richter
Jennifer L. Richter
Jennifer L. Kostyu
Morrison & Foerster LLP
2000 Pennsylvania Ave., N.W.
Suite 5500
Washington, D.C. 20006
(202) 887-1500

Mark Stevenson
President
Send Technologies, LLC
2904 Evangeline Street
Monroe, LA 71201

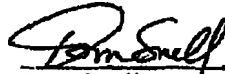
March 22, 2004

DECLARATION OF TOM SNELL, UNION PARISH SUPERINTENDENT

1. My name is Tom Snell. I am the Superintendent of the Union Parish School Board ("Union Parish"). My office address is 1206 Marion Hwy, Farmerville, Louisiana, 71241. I submit this declaration in support of Send Technologies LLC's ("Send"? Consolidated Request for Review, dated March 22, 2004 ("Request for Review").

2. AU of the facts and information set forth in the Request for Review concerning Send's provision of services to Union Parish School Board under the E-rate Program are true and correct to the best of my knowledge.

Executed on this 22nd day of March, 2004,

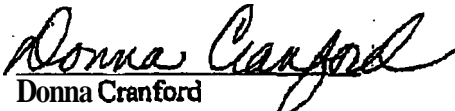

Tom Snell
Superintendent
Union Parish School District

**DECLARATION OF DONNA CRANFORD, UNION PARISH
BUSINESS MANAGER**

MS. Donna Cranford, being duly sworn, declares as follows:

- 1. My name is Donna Cranford. I am the Business Manager for the Union Parish School Board ("Union Parish"). My office address is 1206 Marion Hwy, Farmerville, Louisiana, 71241, I submit this declaration in support of Send Technologies LLC's ("Send") Consolidated Request for Review, dated March 22, 2004 ("Request for Review").**
- 2. All of the facts and information set forth in the Request for Review concerning Send's provision of services to Union Parish School Board under the E-rate Program are true and correct to the best of my knowledge.**
- 3. I declare under penalty of perjury that the foregoing is true and correct.**

Executed on this 22nd day of March, 2004.


Donna Cranford
Business Manager
Union Parish School District

DECLARATION OF MARK STEVENSON

Mr. Mark Stevenson, being duly sworn, declares as follows:

- 1. My name is Mark Stevenson. I am President of Send Technologies LLC ("Send"). My office address is 2904 Evangeline Street, Monroe, Louisiana, 71201. I submit this declaration in support of Send's Consolidated Request for Review, dated March 22, 2004 ("Request for Review").**
- 2. All of the facts and information set forth in the Request for Review concerning Send's participation in the competitive bidding process as a bidder, and its provision of services to Union Parish School Board under the E-rate Program, are true and correct to the best of my knowledge.**
- 3. I declare under penalty of perjury that the foregoing is true and correct.**

Executed on this 22nd day of March, 2004.


Mark Stevenson
President
Send Technologies LLC

CERTIFICATE OF SERVICE

I, Theresa Rollins, hereby certify on this **22th** day of **March, 2004**, a copy of the foregoing Consolidated Request for Review has been served via electronic mail (*) or first class mail, postage pre-paid, to the following:

Eric Einhorn*
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Eric.einhorn@fcc.gov

Katherine Tofigh*
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Katherine.tofigh@fcc.gov

William Maher*
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
William.maher@fcc.gov

Universal Service Administrative Company
Letter of Appeal
Post Office Box 125 – Correspondence Unit
80 S. Jefferson Road
Whippany, NJ 07981

/s/ Theresa Rollins

EXHIBIT A



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2001-2002

January 20, 2004

Mark Stevenson, President
Send Technologies LLC
2904 Evangeline Street
Monroe, Louisiana 71201

Re: Union Parish School Board

Re: Billed Entity Number: 139313
471 Application Number: 229706
Funding Request Number(s): 594052
Your Correspondence Dated: April 1, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 2001 Funding Commitment Adjustment for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note *that* for each application for which an appeal is submitted, a separate letter *is* sent.

Funding Request Number: 594052
Decision on Appeal: **Denied in full**
Explanation:

- You have stated that your appeal will provide clarifying information that corrects the erroneous assumptions made by the Schools and Libraries Division when it adjusted and rescinded funding that was granted to Send Technologies and Union Parish for Funding Year 2001. You stated that there was no error during the initial review process regarding the Form 470 cited, but there was an error in a subsequent review due to insufficient information held by the SLD about Tom Snell and the competitive bidding process undertaken by the Union Parish School Board. You stated that listing Mr. Snell as the contact person on the Form 470 did not violate the intent of the bidding process and that the Union Parish Form 470 did not contain any service provider contact information. You further clarified

that unlike all of the Master Mind type cases, Mr. Snell is an employee of the applicant (Union Parish School Board) and not an employee or representative of a service provider. You believe that the intent of the bidding process was fully observed and fulfilled in the case of Union Parish. You also stated that Mr. Snell holds a fifteen percent minority ownership interest in Send Technologies and that he is not now, nor has ever been an employee of Send. You explained that Mr. Snell is a passive investor in Send, and his ownership interest is substantially below that which could raise a question about a conflict of interest under any applicable law. You stated that out of an abundance of caution, Mr. Snell disclosed his passive minority investment interest in Send to the appropriate local government officials after initial bids were received and Mr. Snell had realized that Send was bidding for Union Parish's services. You also stated that the SLD's review of the previously approved and committed applications was prompted when the SLD learned of the Louisiana Audit that took place years after the competitive bidding process for Union Parish services. You noted that this matter was favorably resolved at the state level and the Louisiana Board of Ethics confirmed that there was no violation of the state and local procurement processes to ensure competition and this finding is significant. You close the appeal by stating that the critical public interest policies served by the Commission's competitive bidding rules are to ensure that schools and libraries seeking support through the E-rate program obtain the most cost-effective services available. Through Union Parish's competitive bidding process, there was a fair and open competition for bidding of services, and at the end of the bidding process, Send was found to be the most cost-effective choice. Thus, the process used by Union Parish to choose Send explicitly met the public policy objectives that underlie the competitive bidding rules. Send Technologies and Union Parish are requesting that the SLD withdraw the issued Commitment Adjustment Letters and overturn its decision to rescind funding for this application.

- After a thorough review of the appeal, and the documentation (audit report from the State of Louisiana Legislative Auditor) which was obtained by the SLD, it was determined that Mr. Tom Snell who is the authorized contact person listed on the cited Form 470 (Application Number: 927550000315997) also has a 15% ownership interest in the selected service provider (Send Technologies, U C) as listed on the Form 471 application. According to the rules of the Support Mechanism, this is considered to be a conflict of interest (see FCC rule paragraph infra) and is in violation of the competitive bidding guidelines. The authorized contact person listed on the Form 470 cannot be associated in any way with a service provider because this violates the intent of the bidding process regarding fair and open competition. Based on this determination, the SLD Commitment Adjustment Letter that was issued on January 31, 2003 to the applicant and the related service provider informing them of the commitment adjustment that was performed on this request (the rescinding of \$59,250.00 in full) was properly justified and was done according to the rules of the Support Mechanism.

FCC rules require the applicant to provide a fair and open competitive bidding process. Per the SLD website: "In order to be sure that a fair and open competition is achieved, any marketing discussions you hold with service providers must be neutral, so as not to taint the competitive bidding process. That is, you should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with 'inside' information or allow them to unfairly compete in any way. A conflict of interest exists, for example, when an applicant's contact person, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected." Since the applicant's contact person in this case has been determined to have a 15% ownership interest in the selected service provider from whom the applicant is requesting services, all funding requests that are associated with the cited Form 470 must be denied. Consequently, the appeal is denied.

Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment, and preventing unfair competitive advantage.¹ A competitive bidding violation and conflict of interest exist when an applicant's consultant, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected.

FCC rules require applicants to seek competitive bids and in selecting a service provider to carefully consider all bids.² FCC rules further require applicants to comply with all applicable state and local competitive bidding requirements.³ In the May 23, 2000 *MasterMind Internet Services, Inc. (MasterMind)* appeal decision, the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.⁴ The FCC reasoned that under those circumstances, the Forms 470 were defective and violated the Commission's competitive bidding requirements, and that in the absence of valid Forms 470, the funding requests were properly denied.⁵ Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone and fax numbers, and email address. Your request for SLD to withdraw the Commitment Adjustment Letter and overturn its decision to rescind funding for this application is denied.

¹ See, e.g., 48 C.F.R. § 9.505(a), (b).

² See 47 C.F.R. §§ 54.504(a), 54.511(a).

³ See 47 C.F.R. § 54.504(a), (b)(2)(vi).

⁴ See *Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 4028 (2000).

⁵ *Id.*

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. *Your* appeal must be received or postmarked within 60 days of the above date on *this* letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Cc: Tom Snell
Union Parish School Board
Marian Highway
Farmerville, LA 71241



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 1999-2000

January 20, 2004

Mark Stevenson, President
Send Technologies LLC
2904 Evangeline Street
Monroe, Louisiana 71201

Re: Union Parish School Board

Re: Billed Entity Number: 139313
471 Application Number: 121741
Funding Request Number(s): 175066
Your Correspondence Dated: April 1, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 1999 Funding Commitment Adjustment for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 175066
Decision on Appeal: **Denied in full**
Explanation:

- *You have stated that your appeal will provide clarifying information that corrects the erroneous assumptions made by the Schools and Libraries Division when it adjusted and rescinded funding that was granted to Send Technologies and Union Parish for Funding Year 1999. You stated that there was no error during the initial review process regarding the Form 470 cited, but there was an error in a subsequent review due to insufficient information held by the SLD about Tom Snell and the competitive bidding process undertaken by Union Parish School Board. You stated that by listing Mr. Snell as the contact person on the Form 470 in no way violated the intent of the bidding process and, that Union Parish's Form 470 did not contain any service provider contact information. You further clarified that unlike all of the Master Mind type cases, Mr. Snell is an employee*

of the applicant (Union Parish School Board) and not an employee or representative of a service provider. You believe that the intent of the bidding process was fully observed and fulfilled in the case of Union Parish. You also acknowledged that Mr. Snell holds a fifteen percent minority ownership interest in Send Technologies and that he is not now, nor has ever been an employee of Send; You explained that Mr. Snell is a passive investor in Send, and his ownership interest is substantially below that which could raise a question about a conflict of interest under any applicable law. You stated that out of an abundance of caution, Mr. Snell disclosed his passive minority investment interest in Send to the appropriate local government officials after initial bids were received and Mr. Snell had realized that Send was bidding for Union Parish's services. You also stated that the SLD's review of the previously approved and committed applications was prompted when the SLD learned of the Louisiana Audit that took place years after the competitive bidding process for Union Parish services. You noted that this matter was favorably resolved at the state level and the Louisiana Board of Ethics confirmed that there was no violation of the state and local procurement processes to ensure competition and this finding is significant. You close the appeal by stating that the critical public interest policies served by the Commission's competitive bidding rules are to ensure that schools and libraries seeking support through the E-rate program obtain the most cost-effective services available. You believe that through Union Parish's competitive bidding process there was a fair and open competition for bidding of services, and at the end of the bidding process, Send was found to be the most cost-effective choice. Thus, you claimed that the process Union Parish went through to choose Send explicitly met the public policy objective⁴ that underlay the competitive bidding rules. Send Technologies and Union Parish are requesting that the SLD withdraw the issued Commitment Adjustment Letters and overturn its decision to rescind funding for this application.

After a thorough review of the appeal and the relevant documentation (audit report from the State of Louisiana Legislative Auditor), which was obtained by the SLD, it was determined that Mr. Tom Snell, who was the authorized contact person listed on the cited Form 470 (Application Number: 716920000143248), also has a 15% ownership interest in the selected service provider (Send Technologies, LLC) as listed on the Form 471 application. According to the rules of the Support Mechanism, this is considered to be a conflict of interest (see FCC rule paragraph *infra*) and is in violation of the competitive bidding guidelines. The authorized contact person listed on the Form 470 cannot be associated in any way with a service provider because this violates the intent of the bidding process regarding fair and open competition. Based on this determination, the SLD Commitment Adjustment Letter that was issued on January 31, 2003 to the applicant and the related service provider, informing them of the commitment adjustment that was performed on this request (the rescinding of \$126,360.00 in full), was properly justified and issued in accordance with the rules of the Support Mechanism.

- FCC rules require the applicant to provide a fair and open competitive bidding process. Per the SLD website: "In order to be sure that a fair and open competition is achieved, any marketing discussions you hold with service providers must be neutral, so as not to taint the competitive bidding process. That is, you should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with 'inside' information or allow them to unfairly compete in any way. A conflict of interest exists, for example, when an applicant's contact person, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected." Since the applicant's contact person in this case has been determined to have a 15% ownership interest in the selected service provider from whom the applicant is requesting services, all funding requests that are associated with the cited Form 470 must be denied. Consequently, the appeal is denied.
- Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment, and preventing unfair competitive advantage.¹ A competitive bidding violation and conflict of interest exist when an applicant's consultant, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected.
- FCC rules require applicants to seek competitive bids and in selecting a service provider to carefully consider all bids.² FCC rules further require applicants to comply with all applicable state and local competitive bidding requirements.³ In the May 23, 2000 *MasterMind Internet Services, Inc. (MasterMind)* appeal decision, the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.⁴ The FCC reasoned that under those circumstances, the Forms 470 were defective and violated the Commission's competitive bidding requirements, and that in the absence of valid Forms 470, the funding requests were properly denied.⁵ Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone and fax numbers, and email address. Your request for SLD to withdraw the Commitment Adjustment Letter and overturn its decision to rescind funding for this application is denied.

¹ See, e.g., 48 C.F.R. § 9.505(a), (b).

² See 47 C.F.R. §§ 54.504(a), 54.511(a).

³ See 47 C.F.R. § 54.504(a), (b)(2)(vi).

⁴ See *Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 16 PCC Rcd 4028 (2000).

⁵ *Id.*

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Cc: Tom Snell
Union Parish School Board
Marian Highway
Farmerville, LA 71241